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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 176.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JANUARY 25, 1912.

(23,032)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1913.

1 In the Supreme Court of Iowa, September Term, 1910.

In Equity.

STATE OF IOWA, Appellee,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

Appeal from Polk District Court.

Hon. Hugh Brennan, Judge.

H. W. Byers and George Cosson, Attorneys for Appellee.
Wm. Ellis, Cook, Hughes & Sutherland, Attorneys for Appellant.

Due, legal and timely service of the above entitled and within Abstract of Record is hereby acknowledged and copy received this — day of September, 1910.

——— ———,
Attorneys for Appellee.

ABSTRACT OF RECORD.

On the 30th day of June, 1910, there was filed in the office of the Clerk of the District Court of Iowa, in and for Polk County, the following:

2 *Petition for Injunction.*

The State of Iowa for cause of action against defendant states:

Par. 1. The defendant, The Chicago, Milwaukee & St. Paul Railway Company, is a common carrier of freight and passengers duly incorporated and operating a line of railway in the states of Illinois and Iowa and other states within the United States. That its lines of railway extend from Davenport, Iowa, to various points within the state of Iowa including the county of Polk.

Par. 2. That for a number of years last past the Clark Coal and Coke Company, the Sunnyside Coal Company, the United Coal Mining Company, the Central States Fuel Company, the Shelby County Washed Coal Company and various other coal companies have been operating in the city of Davenport, Iowa, and receiving coal on shipments coming to Davenport from points in Illinois and other states via the Chicago, Burlington & Quincy Railroad Company and the Chicago, Rock Island & Pacific Railway Company. The method of shipment has been that the within named coal companies have consigned the coal from initial points in Illinois in their own name to themselves as consignees at Davenport, Iowa; have gone to the local agents and paid the freight charges in full;

had the car of coal transferred to the interchange track and then delivered to the Chicago, Milwaukee & St. Paul Railway Company to be transported to various points in Iowa upon the said lines of the Chicago, Milwaukee & St. Paul Railway Company, the charges to be governed by the Iowa distance tariff, the coal company at the time tendering a written billing from Davenport to the point of destination. Thereupon the defendant railway company has
3 accepted said written billing from Davenport to the point of destination and taken said car from said interchange track to its own line and transported the same in accordance with said written billing.

Par. 3. That on or about the — day of ——, 1909, the defendant railway company changed its method of doing business, issued a printed order of said change and since said time has refused to accept said written billing and take the cars loaded with coal from the various coal companies operating in Davenport, Iowa, from the interchange track aforesaid, and refused to transport said cars over its own line to the point of destination as shown by said billing, unless said coal was originally loaded in equipment belonging to the defendant railway company, or unless the local coal companies at Davenport, Iowa, transferred said coal from foreign equipment to the equipment belonging to the defendant railway company. The defendant railway company in answer to the complaint made before the railroad commissioners of Iowa, states: "That it will furnish cars for shipment of coal from Davenport to any point in Iowa as provided by Iowa distance tariff, but will not accept shipments originating at Davenport billed from Davenport in the equipment of other carriers."

Par. 4. That on or about the 27th day of September, 1909, the Clark Coal and Coke Company, the Sunnyside Coal Company, the United Coal Mining Company, the Central States Fuel Company and the Shelby Washed Coal Company filed its complaint before the board of Railroad Commissioners of Iowa and petitioned said board for an order to compel the defendant railway company to accept cars loaded with coal in foreign equipment at Davenport, Iowa, and transport the same to various points in Iowa on the Iowa dis-
4 tance tariff according to the custom previously prevailing. That thereafter and on the — day of ——, 1909, the Board of Railroad Commissioners of Iowa fixed the time of hearing on said complaint, and notice of said complaint and time of hearing was served upon the defendant railway company. Thereafter and on the 4th day of November, 1909, pursuant to said notice, a hearing was had on said complaint at Davenport, Iowa, there being present at said hearing, D. J. Palmer, Chairman of the Board of Railroad Commissioners of Iowa, N. S. Ketchum and W. L. Eaton, Commissioners. The Clark Coal and Coke Company and the Sunnyside Coal Company appearing by L. W. McKown, Parker H. Hoag and W. H. Chamberlain, their attorneys. H. W. Byers, Attorney General, appearing by George Cosson as Special Counsel for all of complainants. The defendant, the Chicago, Milwaukee & St. Paul

Railway Company appeared by William Ellis, its Commerce Counsel. The United Coal Mining Company, the Central States Fuel Company, the Shelby County Washed Coal Company and the Sunnyside Coal Company being parties in interest were by the board permitted to be made parties complainant and to adopt the pleadings filed by complainants as their own.

Par. 5. The case was heard by the commission upon an agreed statement of facts, the following facts being stipulated in open hearing by all of the parties in interest:

"The Clark Coal & Coke Company of Davenport, Iowa, have been making shipments of coal from points in Illinois to Davenport by the Chicago, Rock Island & Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company; that said coal
5 is then placed by the railroad bringing it into Iowa on an interchange track at Davenport; that all charges from point of origin in Illinois to Davenport, Iowa, are paid by the Clark Coal & Coke Company to the railroad bringing said coal; that thereupon complainant had notified the respondent railway company of the placement of said coal and that it desired to ship said coal by the respondent railway company to different points on its own line, and tendered a written billing from Davenport to the point so designated; that thereupon respondent railway company has accepted said written billing from Davenport to said point and taken said cars from said interchange track to its own line and transported the same in accordance with said written billing; that the respondent railway company has changed its method of doing business in the above respects by its printed order and now refuses to accept said written billing and take said cars from said interchange track and transport them over its own line to the point designated by said billing, unless said coal is loaded in equipment belonging to respondent railway company. Respondent railway company, by its answer to the complaint, alleges that it:

"will furnish cars for shipment of coal from Davenport to any point in Iowa, as provided by Iowa Distance Tariff, but will not accept shipments originating at Davenport, billed from Davenport in the equipment of other carriers."

Par. 6. After a full hearing, the Board of Railroad Commissioners found adversely to the contentions of the railway company, delivered its opinion and made the following order and decree:

"In accordance with the conclusions heretofore expressed, it is therefore ordered by the Board of Railroad Commissioners
6 of Iowa that upon arrival of loaded cars of coal at the city of Davenport, upon any line of railroad, when said cars are placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight paid thereon, and the ordinary billing in use by the respondent railway is tendered to it for a billing of said cars so placed to a point on its own line within the state of Iowa, that the respondent railway company be and is hereby ordered and required to accept said billing, receive said car or cars so billed and transport them on its own line

to the point designated by the owner or consignees in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment, and transport said car or cars over its own line to points within this state, so loaded, without unloading and reloading as above set forth, in the same manner that it receives cars from connecting lines in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined.

"It is further adjudged that this order be in full force and effect from and after fifteen (15) days from the date hereof. Dated, Des Moines, Iowa, this 22d day of December, 1909."

Par. 7. On the 24th day of March, 1910, the Board of Railroad Commissioners of Iowa made the following finding and resolution:

"Now on this 24th day of March, 1910, the Board being in session, it appearing in the above entitled cause that the defendant railway company, to-wit: the Chicago, Milwaukee & St. Paul
7 Railway Company, has refused or neglected to obey the order and judgment of this Commission, rendered on the 22d of December, 1909, and that the further time given by the Board to the defendant railway company in which to perfect its appeal has fully elapsed and no appeal has been perfected, and said order still remains in force, and said defendant railway company still neglects or refuses to obey the same; on motion, the Secretary is instructed to turn over all the papers to the Attorney General, and the Attorney General is notified and instructed to proceed to enforce said order in the courts."

Par. 8. Your petitioner states that the defendant railway company still refuses to comply with the order of the board of railroad commissioners of Iowa although said order is just and reasonable, and will continue to do so until a mandatory injunction issues from this court enjoining and directing the said defendant railway company to comply with the order and decree of the Board of Railroad Commissioners of Iowa and accept coal under the Iowa distance tariff from the local coal dealers at Davenport, Iowa, and transport the same to points in Iowa in foreign equipment when the same is tendered to the defendant railway company at Davenport, Iowa, with written billing showing its route and destination.

Wherefore your petitioner prays that a mandatory injunction issue out of this court directing and commanding the defendant, the Chicago, Milwaukee & St. Paul Railway Company, to fully comply with the order of the Board of Railroad Commissioners of Iowa promulgated by said board on the 22d day of December, 1909, and that said defendant railway company be enjoined, com-
8 manded and directed that upon arrival of loaded cars of coal at the city of Davenport, Iowa, upon any line of railway when said cars are placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight paid thereon and the ordinary billing in use by the defendant railway company is tendered to it for a billing of said

cars to a point on its own line within the state of Iowa, to accept said billing, receive said car or cars so billed and tendered to said defendant railway company, and transport the same on its own line to the point of destination as designated by the owner or consignee in said billing within the state of Iowa, and that the defendant railway company receive said car or cars of coal in whatever equipment the same may be loaded without requiring an unloading and reloading into its own line to points within the state of Iowa so loaded without unloading and reloading in the same manner that it receives cars of coal from connecting lines loaded in its own equipment.

Your petitioner asks that the court prescribe a time and place of hearing on the within application for injunction, and for such other and further relief as to the court may seem just and equitable in the premises and for costs of this suit.

That thereafter and on the — day of July, 1910, the defendant filed therein the following

Answer:

Now comes the defendant, the Chicago, Milwaukee & St. Paul Railway Company, and for answer to the petition for injunction herein:—

9

I.

Admits that it is a common carrier of freight and passengers duly incorporated and operating a line of railway in the States of Illinois and Iowa, and other states within the United States, and that its lines of railway extend from Davenport, Iowa, to various points in the State of Iowa, including the County of Polk.

II.

Defendant denies that for a number of years last past the Clark Coal and Coke Company, the Sunnyside Coal Company, the United Coal Mining Company, the Central States Fuel Company the Shelby County Washed Coal Company, or any of them, have been or now are operating in the City of Davenport, Iowa, or receiving coal on shipments coming to Davenport from points in Illinois, or other states, via the Chicago, Burlington & Quincy Railroad Company or the Chicago, Rock Island & Pacific Railway Company, or any other railway company, on the contrary it avers that said last named coal companies and all of them are located and operate at various points in the State of Illinois, and avers that none of them have facilities at the City of Davenport, Iowa, for receiving or shipping coal. It admits that heretofore said last named coal companies have consigned coal from initial points in Illinois in their own names to themselves, as consignees at Davenport, Iowa, and have re-shipped such coal from Davenport to various points on the lines of this defendant within the State of Iowa, the rates of freight governed by the Iowa Distance Tariff and this defendant avers that such

method of transportation was a device of said companies, and each of them, whereby they intended to and did secure
10 the interstate transportation of coal from the point of origin in Illinois to the point of destination in Iowa at less than the lawful tariff rate therefor duly published in accordance with the Statutes of the United States and filed with the Interstate Commerce Commission and this defendant avers that the Iowa Distance Tariff, when used as in the manner above set forth for the regulation of the charges of a part of an interstate journey, is void and of no effect when in conflict with a lawful through published rate so filed with the Interstate Commerce Commission as aforesaid, and in effect between the point of origin and destination of such shipment.

III.

Defendant admits that heretofore and prior to the 27th day of September, 1909, it did order and direct its agents and employés at Davenport to refuse to accept the re-billing of interstate cars at the City of Davenport to destinations within the State of Iowa at the rates prescribed in the Iowa Distance Tariff, and did refuse, and has since refused, to transport such coal locally within the State of Iowa at the rates prescribed in the Iowa Distance Tariff, unless the same was tendered within the State of Iowa as an original shipment and as such loaded into the cars of this defendant.

IV.

Defendant admits the allegations of paragraphs four, five, six and seven of the petition herein.

V.

For answer to paragraph eight of said petition, defendant
11 denies that said order is just or reasonable and avers that said Board of Railway Commissioners of Iowa was wholly without jurisdiction to make said order and avers that said order is in fact an attempt by the State of Iowa to regulate commerce among the several states contrary to the provisions of the Constitution of the United States. Defendant avers further that said Boards was and is without authority under the laws of the State of Iowa to issue said order. Defendant attaches hereto a copy of said order marked Exhibit "A" which is hereby incorporated into this answer as fully as though completely set forth herein.

Wherefore, having fully answered, defendant prays that it be dismissed hence with its cost.

That on the 4th day of August, 1910, the defendant filed therein the following

Cross-Petition.

The defendant by way of cross petition and counter claim herein states:

Par. 1. That it is a railway corporation duly organized under the laws of the State of Wisconsin, and owning and operating a line

of railway in and through the states of Wisconsin, Illinois, Iowa and other states adjoining thereto. That the Board of Railroad Commissioners of the state of Iowa is a board established and authorized by the laws of Iowa, having the power and authority provided by law in relation to certain regulation of railroads within the said state, and that D. J. Palmer, N. S. Ketchum and W. L. Eaton are the duly elected and acting members of said Commission.

Par. 2. That on or about the 22d day of December, 1909,
12 the said Board of Railroad Commissioners had before it a pretended hearing on complaint of the Clark Coal & Coke Company, charging the defendant with failing and refusing to accept, for transportation, cars tendered to it for shipment in the City of Davenport, and to be shipped from said City of Davenport to other points in Iowa, a copy of which complaint is as follows, to-wit:

"For several years, we have been shipping coal in car lots from Davenport, Iowa, to points north of Davenport on the C., M. & St. P. Railway, on shipments coming into Davenport via the C. B. & Q. R. R. and C. R. I. & P. Ry. We pay all the charges up to Davenport, and where we had orders from our customers wanting coal on the C., M. & St. P. Ry., we would have the cars turned over to the C., M. & St. P. Ry. free of all charges, giving the C. M. & St. P. Ry. written billing, showing to what point we wished the car to go, the charges then to follow from Davenport out only."

We now have been served with notice that hereafter and effective at once they will not accept for shipment any coal from either the C. B. & Q. R. R. or C. R. I. & P. Ry. unless it is loaded in C. M. & St. P. equipment. It is practically impossible to secure C. M. & St. P. equipment, and we think this is an arbitrary rule on the part of the C. M. & St. P. Ry. Co. We have orders on our books now for ten to fifteen cars for points on the Milwaukee, and our customers are asking for the coal, which we are ready to ship to them, but the C. M. & St. P. Ry. refuses to accept the cars. Will you kindly advise us at your earliest convenience, whether or not they can refuse to accept the cars? We wired you this morning, from our Davenport
office, asking if we could have an interview with you on Mon-
13 day afternoon, in which event the manager of our Davenport office, Mr. L. W. McKown, will be there Monday."

Also an agreed statement of facts substantially as follows, to-wit:

"The Clark Coal & Coke Company of Davenport, Iowa, have been making shipments of coal from points in Illinois to Davenport by the Chicago, Rock Island & Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company; that said coal is then placed by the railroad bringing it into Iowa on an inter-change track at Davenport: That all charges from point of origin in Illinois to Davenport, Iowa, are paid by the Clark Coal and Coke Company to the railroad Company bringing said coal; that thereupon complainant has notified the respondent railway company of the placement of said coal and that it desired to ship said coal by the respondent railway company to different points on its own line, and tendered a written billing from Davenport to the points so designated; that thereupon respondent railway company has accepted

said written billing from Davenport to said point and taken said cars from said inter change track to its own line and transported the same in accordance with said written billing: That the respondent railway Company has changed its method of doing business in the above respects by its printed order and now refuses to accept said written billing and take said cars from said inter-change track and transport them over its own line to the point designated by said billing, unless said coal is loaded in equipment belonging to respondent railway company. Respondent railway company, by its answer to the complaint alleged that it:

14 "'will furnish cars for shipment of coal from Davenport to any point in Iowa, as provided by Iowa distance tariff, but will not accept shipments originating at Davenport, billed from Davenport in the equipment of other carriers.'"

and its readiness and ability to furnish cars of its own for shipment is not controverted and will therefore be taken to be true. It will thus be observed that before the respondent railway company will take coal for transportation on its own line, in equipment other than its own, it requires that the same shall be unloaded and reloaded into its own cars."

That the said Board of Railroad Commissioners, upon said hearing made the following finding and order, to-wit:

"In accordance with the conclusions heretofore expressed, it is therefore ordered by the Board of Railroad Commissioners of Iowa that upon arrival of loaded cars of coal at the city of Davenport upon any line of railroad, when said cars are placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight paid thereon, and the ordinary billing in use by the respondent railway is tendered to it for a billing of said cars so placed to a point on its own line within the state of Iowa, that the respondent railway company be and it is hereby ordered and required to accept said billing, receive said car or cars so billed and transport them on its own line to the point designated by the owner or consignee in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment, and transport said car or cars over its own line to
15 points within this state, so loaded, without unloading or reloading as above set forth, in the same manner that it receives cars from connecting lines loaded in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined.

It is further adjudged that this order be in full force and effect from and after fifteen (15) days from the date hereof."

Par. 3. It further says that the said finding and *and* order of said Board of Railroad Commissioners is null and void as against this defendant, and that the same ought not to be enforced, but ought to be set aside and held for naught for the following, among other reasons, to-wit:

a. The said decision and order of said Board of Railroad Com-

missioners is void because it is an attempt on the part of said Board to regulate commerce between the several states, and relates to shipments between the states and not to a shipment originating within the State of Iowa.

b. The said Board of Railroad Commissioners of Iowa was, and is, wholly without authority or jurisdiction to make such order, and said order is in fact an attempt, by the State of Iowa, to regulate commerce between the several states, and is contrary to the provisions of the Constitution of the United States.

c. The said Board of Railroad Commissioners was without power, under the laws of the State of Iowa, to require the said defendant to accept the cars mentioned and contemplated by and in said
16 order the statutes of Iowa only requiring it to accept the cars from the connecting carrier itself, and not from an individual or private person not operating a line of railway.

d. That all of the shipments covered by, or contemplated in said order and decision of said Board of Railroad Commissioners were cars that were and are to be brought into the state of Iowa from the state of Illinois over connecting lines, and if the same are to be treated as in the custody and possession of, and as the cars of said connecting lines, then the acceptance of same by the defendant would be, and is, the acceptance of interstate shipments, while if the said cars are to be treated as the cars of, and as under the control of the said shipper, the Clark Coal & Coke Company, then they are not connecting carriers within the contemplation of the laws of Iowa, and said Commissioners have no right or authority to require defendant to accept said shipment except as it shall be loaded in its own cars.

e. That the said shipments provided in the said order of said Railroad Commissioners are, in fact, interstate shipments, and have not, in fact, been divested of their character of inter-state shipments when they are tendered and offered to the defendant because the tariff filed by the said Chicago, Rock Island & Pacific Railway, and Chicago, Burlington & Quincy Railway, as well as those of the defendant have been filed with the Inter-state Commerce Commission and are authorized by the Inter-state Commerce laws of the United States, and require, and make the shipment incomplete, until the shipment is unloaded and the said tariffs authorize and compel the collection of the merge at the rate of $1.00 a day until the shipment is unloaded from the car, and the said shipment is, and remains an inter-state shipment until the shipment is in fact unloaded from the car.

17 Par. 4. That the said action of the Board of Railroad Commissioners is contrary to the Fourteenth amendment of the Constitution of the United States, because it is, in effect, the taking of private property for public use, without the process of law, and without compensation first being made therefor, and if put into effect will, in effect, be the taking of private property without the process of law, and without compensation, all contrary to the Constitution of the United States in such case made and provided.

That the same is also contrary to the Inter-state Commerce laws,

and laws of the United States regulating Inter-state commerce, and commerce between states and territories. That the said plaintiff herein and the Board of Railroad Commissioners of the State of Iowa are endeavoring to put the said order of the Board of Railroad Commissioners, heretofore mentioned, into force, and unless the same is set aside and restrained by this court, they will so put the same into force and effect to the great injury and detriment of the defendant herein.

Wherefore the defendant asks that the said order of the Board of Railroad Commissioners of the State of Iowa hereinbefore set forth, and entered on the 22d day of December, 1909, be declared null and void, and of no force or effect, and that the same be set aside, and that the said Board of Railroad Commissioners, and each member thereof, their servants, officers and agents, and the Attorney General of the State of Iowa be enjoined and restrained from taking any steps to in any way enforce the same, or any part thereof. And that this defendant asks such other and further relief as is equitable, and as is contemplated by Chapter 129 of the Laws of the
18 Thirty-third General Assembly of Iowa, and costs of this action.

(Duly verified.)

Bill of Exceptions.

The issues being thus formed, this cause was called for trial upon the — day of August, 1910, before the Hon. Hugh Brennan, Judge of the District Court of Polk county, Iowa, and the following proceedings were had, to-wit:

The plaintiff introduced in evidence a paper being the Decision and Order of the Board of Railroad Commissioners, made and entered on the 22d day of December, 1909, mentioned in the foregoing petition, as follows, to-wit:

Complainant, the Clark Coal & Coke Company, operating a branch office at Davenport, Iowa, on the 25th of September, 1909, made the following complaint to the Commission:

"For several years we have been shipping coal in car lots from Davenport, Iowa, to points north of Davenport on the C. M. & St. P. Railway, on shipments coming to Davenport via the C. B. & Q. R. R. and C. R. I. & P. Ry. We pay all the charges up to Davenport, and where we had orders from our customers wanting coal on the C. M. & St. P. Ry., we would have the cars turned over to the C. M. & St. P. Ry. free of all charges, giving the C. M. & St. P. Ry. written billing, showing to what point we wished the coal to go, the charges then to follow from Davenport out only.

"We now have been served with notice that hereafter and
19 effective at once they will not accept for shipments any coal from either the C. B. & Q. R. R. or C. R. I. & P. Ry. unless it is loaded in C. M. & St. P. equipment. It is practically impossible to secure C. M. & St. P. equipment, and we think this is an arbitrary ruling on the part of the C. M. & St. P. Ry. Co. We have orders on our books now for ten to fifteen cars for points on the Milwaukee, and our customers are asking for the coal, which we are ready to

ship to them, but the C. M. & St. P. Ry. refuses to accept the cars. Will you kindly advise us at your earliest convenience, whether or not they can refuse to accept the cars? We wired you this morning, from our Davenport office, asking if we could have an interview with you on Monday afternoon, in which event the manager of our Davenport office, Mr. L. W. McKown, will be there Monday."

Thereupon, the Commission, by its Secretary, sent the following telegram to the respondent railway company:

"Sept. 27, 1909, 3 P. M.

"H. E. Pierpont, G. F. A., C. M. & St. P. Ry. Co., Chicago.

"Complaint is made by the Clark Coal & Coke Company of Davenport of recent order of your company, requiring coal originating in Illinois, which is reconsigned at Davenport, to be reloaded into C. M. & St. P. equipment. Complainants protest against this order, especially in view of no notice being given. Would suggest that complainant be given thirty days' notice of your requirement, in order that present deals will not be affected and that orders now on hand under former basis could be filled. Wire answer.

"DWIGHT N. LEWIS, *Secretary.*"

20 The following telegram was received in reply:

"Chicago, Ill., Sept. 28, 1909.

"Dwight N. Lewis, Secretary, Iowa Railway Commission,
"Des Moines, Iowa.

"Your wire yesterday. This company does not feel justified in hauling Illinois coal under Iowa Distance tariff rates in foreign equipment. Notice was given in regular manner, this company accepting such cars as were loaded when notice was given connecting line. Do not believe we should be asked to give additional notice, but would be glad to hear from you further on this subject, if you consider our action irregular in any manner.

"H. E. PIERPONT."

Thereupon, the Board by its Secretary, sent the following telegram:

"Sept. 30, 1909.

"Mr. H. E. Pierpont, G. F. A., C. M. & St. P. Ry. Co., Chicago, "Ill.

"Answering your wire, Board directs me to inquire whether the Commission is to understand that your recent order refers only to coal. How would you treat other commodities finding their way to your lines? Have you examined the legal phase of the matter? Wire answer.

"D. N. LEWIS, *Secretary.*"

The following communication was then received from the complainant, Clark Coal & Coke Company, by its manager at Davenport, M. L. W. McKown:

21 "If my presence is desired or any more information is wanted, please advise me at once as this matter is of vast importance to us inasmuch as our customers on the Milwaukee road are pushing us for their coal and which the Milwaukee people refuse to accept from the other roads here.

"Since you wired Mr. Pierpont, I personally called Mr. Simption of the Milwaukee at Chicago by long distance telephone, asking him to waive the ruling merely long enough to let us ship ten cars and we would do it in five days, to help out the dealers who had placed orders with us prior to the ruling, and we would then abide by their ruling until investigation was completed, but he refused to grant our request.

"If our first letter was not clear enough to the Board, kindly let us know."

Shortly thereafter the Board received the following telegram:

"Chicago, October 4, 1909.

"Dwight N. Lewis, Secretary, Iowa Railway Commission, Des "Moines, Iowa.

"Recent order refers only to coal, as I know of no other commodity on which same conditions exist and question has not arisen with reference to any other commodity. Does your commission find any legal objection to order as issued? Wire answer. Your message thirtieth.

"H. E. PIERPONT."

Thereafter, to-wit: October 9, 1909, the Board by its Secre-
22 tary, sent the following letter to complainant, Clark Coal & Coke Company, and to H. E. Pierpont, General Freight Agent, C. M. & St. P. Ry. Co.:

"I am directed to advise you that the Commissioners will hear arguments in the case, Clark Coal & Coke Co., Davenport, vs. C. M. & St. P. Ry. Co., complaint against order requiring Illinois coal reconsigned at Davenport, to be reloaded into C. M. & St. P. equipment, on Thursday, October 21st, 10 A. M. at this office."

Thereafter, the following telegram was received from the respondent railway company:

"Chicago, Ill., October 11, 1909.

"Board of Railroad Commissioners, Des Moines, Iowa.

"Has any complaint of Clark Coal & Coke Company of Davenport, Iowa, been served upon this company? If so advise when and upon whom.

"WILLIAM ELLIS."

To which the Board, by its Secretary, sent the following reply by wire:

"Complaint of Clark Coal & Coke Co. of Davenport, sent H. E. Pierpont by wire Sept. 27th.

"D. N. LEWIS, *Secretary.*"

On October 13, 1909, the Board by its Secretary, sent the following letter to complainant, Clark Coal & Coke Company, William Ellis, Commerce Counsel for respondent railway company, and H. E. Pierpont, General Freight Agent for respondent Railway company:

"I am directed to advise you that the Commissioners, for the convenience of those interested in the controversy, have changed
23 the place of hearing arguments in the complaint of Clark Coal & Coke Co. vs. C. M. & St. P. Ry. Co. from Des Moines to Davenport, Iowa. The date remains the same—Thursday, October 21st."

Afterward, to-wit: October 26, 1909, due notice was given by letter to all parties in interest that said hearing was postponed until November 4, 1909, at Davenport, Iowa.

On November 3, 1909, the Board received the following letter from William Ellis, Commerce Counsel for respondent railway:

"Chicago, October 29, 1909.

"Mr. Dwight N. Lewis, Secretary, Board of Railroad Commissioners of Iowa, Des Moines, Iowa.

"DEAR SIR: Replying to yours of October 26, this company will furnish cars for shipment of coal from Davenport to any point in Iowa as provided by Iowa Distance Tariff, but will not accept shipments originating at Davenport billed from Davenport in the equipment of other carriers."

Now, to-wit: on this fourth day of November, 1909, at 10 o'clock A. M., pursuant to notice, a hearing was had at Davenport, Iowa, on the above mentioned complaints.

There were present at hearing, D. J. Palmer, Chairman, N. S. Ketchum and W. L. Eaton, Commissioners.

The Clark Coal & Coke Company and the Sunnyside Coal Company (hereinafter mentioned) appeared by L. W. McKown
24 and Parker H. Hoag and W. H. Chamberlain, their attorneys. The Hon. W. H. Byers, Attorney-General of Iowa, appeared by the Hon. George Cosson, as special counsel for all complainants.

The respondent railway company appeared by William Ellis, its Commerce Counsel.

The United Coal Mining Company, the Central States Fuel Company and the Shelby County Washed Coal Company, and the Sunnyside Coal Company, being parties in interest, were by the Board permitted to be made parties complainant and to adopt the pleadings heretofore filed by complainants, as their own.

Respondent railway company raises the question that it has received no notice of this hearing. The Board, however, upon the entire record, finds adversely to this claim and holds that said railway company has received due notice of the hearing and by its appearance waives notice.

Thereupon the following facts, material and pertinent to the controversy, were stipulated in open hearing by all the parties in interest:

"The Clark Coal & Coke Company of Davenport, Iowa, have been making shipments of coal from points in Illinois to Davenport by the Chicago, Rock Island & Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company; that said coal is then placed by the railroad bringing it into Iowa on an interchange track at Davenport; that all charges from point of origin in Illinois to Davenport, Iowa, are paid by the Clark Coal & Coke Company to the railroad company bringing said coal; that thereupon complainant has notified the respondent railway company of the placement of said coal and that it desired to ship said coal by the respond-
25 ent railway company to different points on its own line, and tendered a written billing from Davenport to the point so designated; that thereupon respondent railway company has accepted said billing from Davenport to said point and taken said cars from said interchange track to its own line and transported the same in accordance with said written billing; that the respondent railway company has changed its method of doing business in the above respects by its printed order and now refuses to accept said written billing and take said cars from said interchange track and transport them over its own line to the point designated by said billing, unless said coal is loaded in equipment belonging to respondent railway company. Respondent railway company, by its answer to the complaint, alleges that it:

" 'will furnish cars for shipment of coal from Davenport to any point in Iowa, as provided by Iowa Distance Tariff, but will not accept shipments originating at Davenport, billed from Davenport in the equipment of other carriers.' "

and its readiness and ability to furnish cars of its own for shipment is not controverted and will therefore be taken to be true. It will thus be observed that before the respondent railway company will take coal for transportation on its own line, in equipment other than its own, it requires that the same shall be unloaded and reloaded into its own cars."

Upon the above agreed statement of facts, the respondent railway company contends that this Commission has no jurisdiction in the case, for the reason and on the ground that the shipments in ques-
tion, which the respondent railway company refuses to accept,
26 are interstate and this Commission is without authority to promulgate an order which would affect an interstate shipment.

The great importance to the shippers of Iowa of the questions involved in this controversy are apparent by a statement of the precise questions at issue:

1st. Is the transaction, according to the agreed statement of facts, an interstate transaction, and if so, can a common carrier require commodities shipped by carload from a foreign state, in the manner suggested by the agreed statement of facts, if in cars not belonging to its own equipment, to be unloaded and reloaded into cars of its own before it will transport such commodities on its own line?

2nd. If the transaction partakes in some degree of the nature of an interstate transaction, is it such a burden upon the commerce be-

tween states as to prevent a state from exercising any authority whatever over the same?

Involved in this latter proposition are questions as to state and national legislation and the legal effect of each, all of which will be noticed hereafter.

In considering the first proposition, we have a state of facts as follows:

The shipper of coal enters into a contract in writing with a carrier to transport coal by the carload from a point in Illinois to a point in Iowa.

The contract for transportation is complete in itself. The carrier performs its duty under this written contract; places the car at the point designated by the consignee at Davenport, to-wit: on an interchange track.

27 The consignee accepts the car at Davenport by designating the point where it shall be placed by the original transporting carrier and by paying the freight.

The original carrier thus completes his contract and owes no further duty thereunder, either to consigner or consignee, and performs no further duty under the contract.

Can the respondent railway company be required, as a common carrier, to take that car from the interchange track where it was placed by order of the consignee and switch it to its own track and transport it over its own line without the consignee being compelled to unload and reload in cars belonging to respondent's equipment?

In other words, is the interstate character of the original shipment terminated by the completion of the original written contract by the carrier in placing the car upon an interchange track and accepting transportation charges? Or does its interstate character continue until such time as it arrives upon the track of the respondent railway company by being switched from the interchange track to its own track, either by its own or some other switching equipment?

Is there something of an interstate nature which lingers about the car after the completion of the original contract? Is there still something substantial to be done before the interstate transaction can be legally said to be finished?

A preliminary question which ought to be answered before any general discussion of the issue is, as to whether or not a rail-

28 road company has a right to require carload freight to be loaded into its own cars before it will accept it for shipment.

We first consider this question freed from all interstate problems and as though it applied only to interstate shipments.

The answer to this question is found in Section 2116 of the Code, which contains the following language:

"Every railway corporation shall * * * also receive and transport in like manner the empty or loaded cars furnished by any connecting road, to be delivered at any station or stations on the line of its road to be loaded or discharged or reloaded and returned to the road so connecting."

An exceedingly technical mind might quibble over the words "furnished by any connecting road". An ingenious theory might be evolved, that a car loaded with coal, standing on an interchange

track where it was placed at the request of the owner, was legally in possession of the owner, and that a common carrier, under this statute, was not bound to receive cars "furnished" by the owner of the commodity, only when "furnished by a connecting road."

Such a far fetched theory, however, could not have been the legislative intent. All cars in public service by a carrier are "furnished" by railway companies. They are owned and provided by railway companies for the use of the shipping public, and it is the duty of common carriers to handle these cars on railroad tracks for the shipping public.

So far as the shipper is concerned, he knows no difference
29 in the owner-ship of railways. The modern thought considers all railways as one great system, so far as the shipper is concerned, and they are, and must, in the nature of things, be treated as such. The whole system of railways and their operation and the laws which govern their regulation, are a growth and a development. New conditions require new methods of treatment.

As a matter of fact, in these days all freight cars are in effect, pooled. In the actual operation of railroads generally, no distinction of ownership is made in the handling of cars. Modern conditions, in this respect, have been recognized by the railroads themselves in the establishment of car service bureaus. A slight compensation is charged for the use of cars for accounting and other purposes, but this is not inconsistent with the theory that in actual operation, all freight cars are pooled.

It would be a monstrous doctrine and an incalculable burden upon the shippers of this state if it were for a moment conceded that any railroad operating in Iowa could require cars to be unloaded and reloaded into its own equipment before it would transport them. It is within common knowledge that to unload and reload Iowa coal causes great injury to the coal itself, as well as the burden of expense in the transfer. If such a right existed and was exercised by the railroads of Iowa, the injury to the coal interests of this state would be incalculable.

We believe that the statute is a complete answer to the question and that it is founded upon the inherent necessities of the shipping public.

It is not seriously contended, however, that a common car-
30 rier has the right to require unloading and reloading as above stated, where the transaction is a purely intrastate transaction, but respondent contends that however burdensome such a rule might be in its actual operation to citizens of this state, it has a right to adopt it because the transaction is an interstate transaction over which the law making power of this state has no authority.

Although the position may be considered an advanced one in rate regulation, in view of language found in certain authorities, yet we cannot give our assent to the doctrine that a carrier can make a rule over which this state has no jurisdiction, requiring the unloading of cars into its own equipment before it will transport the freight, even if engaged in unquestionable interstate transportation.

Is the transaction described in the agreed statement of facts in this case, an interstate or an intrastate one?

Under the admitted facts, the city of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee and he could sell it in transit or at Davenport or reconsign it to a point on respondent's railway, or any other railway, at his own discretion.

All acts contemplated by the original contract of shipment had been fully performed by both carrier and shipper. Possibly the consignor intended, when the contract for shipment was originally made in Illinois, that his carload of coal should eventually reach some point then undetermined, on the respondent's railway beyond Davenport. He had a right, however, to change his mind upon this subject. It was his own; under his own absolute control, and he had a right to dispose of it as he saw fit either before or after its arrival at Davenport, as contemplated by his contract with the initial carrier.

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Upon a precisely similar state of facts, this Commission has held that the interstate character of the transaction was absolutely at an end upon the arrival and placement of shipment at the city of Davenport and the payment of the freight by the consignee and rebilling by him to another point within the state. (See Wheat vs. Chicago, Rock Island & Pacific Railway Co. Commissioners' Report, 1908, page 342.) The decision in that case was based upon the case of Gulf, Colorado and Santa Fe, vs. Texas, 204 U. S., pages 404-414. Our opinion in the Wheat case contains a review of authorities which it is unnecessary at this time to repeat. In his honor, Justice Brewer's, opinion in the Texas case, which was decided February 25, 1907, the case being elaborately argued by counsel, Justice Brewer clearly states the fundamental principles which are applicable to the case at bar.

In the case cited, cars of corn were shipped from Hudson, S. D., billed to Texarkana, Texas, the freight being prepaid. On arrival at Texarkana, it was rebilled by written bill of lading from Texarkana, Texas, to Goldthwaite, Texas. It was originally intended that the corn shipped from Hudson, S. D., should ultimately reach Goldthwaite, Texas, as its destination. The dealers who were interested in the transaction, adopted the method of originally billing from Hudson, S. D., to Texarkana, Texas, and rebilling from Texarkana to Goldthwaite, Texas, because they could save about 1½ cents per bushel on the freight by that method. Many other facts appear in the case cited which are immaterial to this discussion.

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The opinion rendered by his honor, Justice Brewer, contains the following language:

"The single question in the case is whether, as between Texarkana and Goldthwaite, this was an interstate shipment. If so the regulations of the state railroad commission do not control and the court erred in enforcing the penalty. If, however, it was a purely local shipment, the judgment below was right and should be sustained."

"The corn was carried from Texarkana, Texas, to Goldthwaite,

Texas, upon a bill of lading which upon its face showed only a local transportation. It is, however, contended by the railway company that this local transportation was a continuation of a shipment from Hudson, South Dakota, to Texarkana, Texas; that the place from which the corn started was Hudson, South Dakota, and the place at which the transportation ended was Goldthwaite, Texas; that such transportation was interstate commerce, and that its interstate character was not affected by the various changes of title or issues of bills of lading intermediate its departure from Hudson and its arrival at Goldthwaite.

"It is undoubtedly true that the character of a shipment, whether local or interstate, is not changed by a transfer of title during the transportation. But whether it be one or the other may de-
33 pend upon the contract of shipment. The rights and obligations of carriers and shippers are reciprocal. The first contract of shipment in this case was from Hudson to Texarkana. During that transportation a contract was made at Kansas City for the sale of the corn, but that did not affect the character of the shipment from Hudson to Texarkana. It was an interstate shipment after the contract of sale as well as before. In other words, the transportation which was contracted for, and which was not changed by any act of the parties, was transportation of the corn from Hudson to Texarkana—that is, an interstate shipment. The control over goods in process of transportation, which may be repeatedly changed by sales, is one thing; the transportation is another thing, and follows the contract of shipment, until that is changed by the agreement of owner and carrier. Neither the Harroun nor the Hardin company changed or offered to change the contract of shipment or the place of delivery. The Hardin company accepted the contract of shipment theretofore made and purchased the corn to be delivered at Texarkana—that is, on the completion of the existing contract. When the Hardin company accepted the corn at Texarkana the transportation contracted for ended. The carrier was under no obligations to carry it further. It transferred the corn, in obedience to the demands of the owner, to the Texas and Pacific Railway Company, to be delivered by it, under its contract with such owner. Whatever obligations may rest upon the carrier at the terminus of its transportation to deliver to some further carrier, in obedience to the instructions of the owner, it is acting not as carrier, but simply as a forwarder. No new arrangement having been made for transportation, the corn was delivered to the Hardin Company at Texarkana. Whatever may have been the thought
34 or purpose of the Hardin company in respect to the further disposition of the corn, was a matter immaterial so far as the completed transportation was concerned.

"In this respect there is no difference between an interstate passenger and an interstate transportation. If Hardin, for instance, had purchased at Hudson a ticket for interstate carriage to Texarkana, intending all the while after he reached Texarkana to go on to Goldthwaite, he would not be entitled on his arrival at Texarkana to a new ticket from Texarkana to Goldthwaite at the proportionate fraction of the rate prescribed by the Interstate Commerce

Commission for carriage from Hudson to Goldthwaite. The one contract of the railroad companies having been finished he must make a new contract for his carriage to Goldthwaite, and that would be subject to the law of the State within which that carriage was to be made.

"The question may be looked at from another point of view. Supposing a carload of goods was shipped from Goldthwaite to Texarkana under a bill of lading calling for only that transportation, and supposing that the laws of Texas required, subject to penalty, that such goods should be carried in a particular kind of car, can there be any doubt that the carrier would be subject to the penalty, although it should appear that the shipper intended after the goods had reached Texarkana to forward them to some other place outside the State? To state the question in other words, if the only contract of shipment was for local transportation, would the state law in respect to the mode of transportation be set one side by a Federal law in respect to interstate transportation on the ground that the shipper intended after the one contract of shipment had been com-
35 pleted to forward the goods to some place outside the State? Coe vs. Errol, 116 U. S. 517-527.

"Again, it appeared that this corn remained five days in Texarkana. The Hardin Company was under no obligation to ship it further. It could in any other way it saw fit have provided corn for delivery to Saylor & Burnett and unloaded and used that car of corn in Texarkana. It must be remembered that the corn was not paid for by the Hardin Company until its receipt in Texarkana. It was paid for on receipt and delivery to the Hardin company. Then, and not till then, did the Hardin company have full title to and control of the corn, and that was after the first contract of transportation had been completed.

"It must further be remembered that no bill of lading was issued from Texarkana to Goldthwaite until after the arrival of the corn at Texarkana, the completion of the first contract for transportation, the acceptance and payment by the Hardin company. In many cases it would work the grossest injustice to a carrier if it could not rely on the contract of shipment it has made, know whether it was bound to obey the state or Federal law, or, obeying the former, find itself muleted in penalties for not obeying the law, of the other jurisdiction, simply because the shipper intended a transportation beyond that specified in the contract. It must be remembered that there is no presumption that a transportation when commenced is to be continued beyond the state limits and the carrier ought to be able to depend upon the contract which it has made and must conform to the liability imposed by that contract."

We have quoted freely from this opinion, because it seems
36 to us that the principles enunciated therein are decisive upon the vital questions involved in this case. When applying the facts of the case cited to those in the case at bar, it may be contended that a distinction should be made between a case where the carrier voluntarily accepts a car for shipment and enters into a contract by a new bill of lading, and the case at bar, where the respond-

ent railway company refuses to accept and refuses to enter into such contract.

There is *on* merit in such a distinction, however, because it is the duty of a carrier to accept freight when tendered for shipment and transport the same when tendered by consignor, and when, as in the case at bar, the consignor tendered a new billing for reconsignment, and the respondent railway company in express terms, refused to enter into a contract, it ought not to be heard to complain that it had not entered into a contract, because the shipper had performed everything required of him and the failure to enter into a contract was the sole fault of the respondent carrier.

It may further be contended that in the case at bar, there was still some slight service to be performed by the initial carrier and for that reason the interstate character of the transaction was neither completed nor ended. This contention, to our mind, is easily answered. When the car was placed on the interchange track at Davenport by the initial carrier at the request of the owner, the utmost that could pos-ibly be claimed would be that it still remained for the initial carrier in some way to get car into the hands of the respondent carrier. While the admitted facts do not show that any further duty was required of the initial carrier, yet if this be true, it was no part of the original contract of transportation.

To use the language of Justice Brewer, heretofore quoted,
37 "Whatever obligations may rest upon a carrier at the terminus of its transportation to deliver to some further carrier, in obedience to the instructions of the owner, it is acting not as a carrier, but simply as a forwarder', and the delivery of the owner was completed when it was placed upon the interchange track and the freight had been paid. Whatever further duty was to be performed, if any, was the duty of a forwarder and this duty is not only required by the statutes of Iowa, but by the general law. It is the duty to "switch" rather than to "transport."

Another fact is worth considering. Suppose that the consignor was so fortunate as to be the owner of a private track in Davenport, and pursuant to his order, in the place of leaving the car upon the interchange track, the initial carrier had left it upon the consignor's private track. Certainly no one will contend for a moment that anything remained to be done in the performance of the contract by the initial carrier, or that even a vestige of an interstate character still lingered about the car. Such a transaction would be a complete delivery to the consignor or consignee, if they were identical. The owner had absolute control of it. He could use it himself, sell it at Davenport, or reconsign it as he saw fit.

There cannot be a difference in principle between a case where a car is placed upon an interchange track upon the order of a shipper and when it is placed upon a private track, upon the orders of a shipper and owner of the private track. To make such a distinction would be to permit unjust and unlawful discrimination between shippers who own private tracks, and those who do not. An interchange track is in a broad sense owned by all shippers who are not sufficiently fortunate to be the owners of private tracks. It is
38 built for the convenience of the public. The public has such an interest in it as to be entitled to its use.

While it does not clearly appear in this case, it is quite likely that the real gist of the complaint on the part of the respondent railway company is that the rate from the initial point in Illinois to Davenport, added to the rate established by the Iowa Distance Tariff from Davenport to any point on the line of the respondent railway company is less than the interstate rate by continuous mileage from the initial point of shipment to final destination at a point on the respondent railway. In other words, the shipper has discovered that he can save in the rate by adopting the method of making two separate and complete contracts rather than by making one bill of lading for the entire distance; that the interstate rate is greater than the sum of the locals and therefore the respondent railway company, if permitted to enforce the method that it seeks to adopt, would receive a greater proportionate rate for service than if two separate contracts were made. The precise point of this contention was involved in the Gulf, Colorado & Santa Fe, vs. Texas, supra.

A shipper has the right to keep himself informed of Interstate Commission rates and of the state commission rates, both of which are lawful, and take such advantage of either as he may deem to be to his interest.

It is our opinion, in view of the authorities above cited, as applied to the facts in this case, that the service demanded by complainants of the respondent railway is a purely local service and entirely within the control of the legislature of Iowa and of its Commission. That service under the agreed facts is to accept the rebilling tendered by the complainant of a car of coal lying upon the interchange track in Davenport, and receive that car for shipment and transport it to the destination ordered by the shipper. This view of the case completely disposes of the merits of this controversy, and yet, from the fact that it was so ably argued by counsel on both sides and so many authorities were cited in support of their respective positions, it is proper that we mention briefly some of these authorities.

39

Many of the authorities cited by counsel for respondent are inapplicable to the case at bar, for the reason that they are founded upon the assumption that the shipment is interstate. It cannot be doubted, as a general principle, that where Congress has legislated upon the subject of "regulation of commerce among the states", that all regulation of such commerce or transportation, as distinguished from matters which are purely incidental to such commerce or transportation, supersedes state regulation upon the subject so legislated upon by Congress.

It would serve no good purpose in this opinion to review all the authorities cited in support of this proposition. A few well settled rules, however, ought always to be kept in mind applying to this principle. There is a clear distinction between regulating a railroad and the method of its operation and regulating the commerce and transportation upon that railroad. Legislation may affect interstate commerce and persons engaged in it, without regulating interstate commerce.

It is an inaccurate statement to say that where a state law involves interstate commerce, that therefore it is invalid. Courts have

repeatedly upheld laws passed by a state governing and con-
40 trolling the management and operation of railroads, although these laws affect interstate commerce as well as intrastate commerce.

The difficulty always is in determining whether or not a particular subject comes within the police power of a state, and whether or not it affects interstate commerce only as an incident and without putting any burden upon it. It is not necessary for us to give illustrations of this exercise of power by a state which has been upheld by courts. It is quite clear, however, that when a state statute compels a carrier to accept freight in carloads from a connecting road and transport it over its own line, that such a law is not a burden upon the commerce between the states. It is precisely the contrary. To permit a requirement of a carrier that cars should be unloaded and reloaded in its own equipment before it would transport them, is a great hindrance to commerce, and creates a burden only to the shipper.

It is our opinion that the question as to whether or not the shippers of Iowa shall be compelled by a carrier to unload coal or other freight coming from a foreign state and reload it into other cars before it will be shipped is a purely local question and within the power of the state to settle. We do not believe that our statute upon that subject is inconsistent with the legislation of Congress and we cannot assent to the proposition that Congress has legislated upon the subject, either specifically or by implication. If such legislation has been had, so far as it has been shown to us, it is found in Section 15 of the Interstate Commerce Act, which reads as follows:

"The Commission may also, after hearing on a complaint, establish through rates and joint rates as the maximum to be charged, and prescribe the division of such rates as hereinbefore pro-
41 vided, and the terms and conditions under which through routes shall be operated, when that may be necessary to give effect to any provisions of this act."

No reasonable interpretation of the language in this act can include legislation except in regard to "routes" and "rates," and any routes or rates established by the Interstate Commerce Commission are not inconsistent with the requirements of our statute that carriers shall be required to receive and transport the loaded cars of another line.

It is true, in this act is found the language: "and the terms and conditions under which such through route shall be operated." This language must be construed as referring to the subject of rates and routes. The use of the words "terms and conditions" is made perfectly clear by the latter portion of the section and evidently refer to the routing and the terms upon which the compensation received for transportation shall be divided.

If the state law is inconsistent with congressional legislation it must be clearly apparent. Language ought not to be stretched to find inconsistencies. Unless a state law is inconsistent with the national law, it ought to be upheld.

This principle finds support in the Rae case, 14 Federal, 401; Bagg case, 109 N. C., 279, and other cases. See also, McNeill vs.

Southern Ry. Co., 202 U. S. 543. The latter case contains an exhaustive citation of authorities upon the general subject, as well as illustrations where state laws regulating the management and operation of railways have been upheld, although the same did, in some measure, affect trains engaged in interstate commerce.

42 It would be useless to attempt to review all of the authorities cited, and we therefore select a few cases upon which stress was laid by counsel for respondent.

One of the leading cases relied upon is that of the Wabash, St. Louis & Pacific Ry. Co. vs. Illinois, 118 U. S. 557. We agree with counsel that it is a most illuminating authority, but the brightest light that it sheds is upon the proposition that it is utterly impossible to reconcile all the authorities upon the propositions involved.

In the case just cited, two contracts were made for through shipments from two different points in Illinois to the city of New York. The rate charged for the shorter distance was greater than that for a longer distance, and discrimination was made the gist of the complaint. It was contended that although the contract for shipment from Illinois to New York in each case was complete in itself and was an interstate transaction, yet that the law of Illinois regulating freight rates was operative within the state on interstate shipments as well as intrastate shipments, so far as it related to its proper proportion of distance from the point of shipment to New York. It was claimed that the legal rate, according to the Illinois law, could be segregated from the entire rate on the basis of its proportion of distance and as to that portion so segregated, the law of Illinois would apply and was a valid law to that extent. The court held, in substance, after a most exhaustive review of all authorities, that the transaction was an indivisible, continuous, interstate shipment and that the Illinois law did not apply to it. The dissenting opinion in this case, written by Mr. Justice Bradley and concurred in by the Chief Justice and Mr. Justice Gray, is worthy of careful

43 examination for its clear distinctions between the regulation of commerce and the regulation of matters which are only an incident connected with commerce.

Surely the above case can have no possible bearing upon the issues involved in the case at bar.

Another case which was relied upon by respondent's counsel with great confidence, is McNeill vs. Southern Railway Co., 202 U. S. page 543.

The gist of the case is found in the third paragraph of the syllabus as follows:

"The interstate transportation of cars from another state, which have not been delivered to the consignee, but remain on the track of the railway company in the condition in which they were originally brought into the state, is not complete and they are still within the protection of the commerce clause of the constitution."

The dispute arose in this case concerning demurrage and involved the validity of an order made by the railroad commission of North Carolina. There was dissatisfaction over the place of delivery of cars engaged in interstate traffic. The carrier refused to deliver at

point requested by the complainant and was ordered by the railway commission of North Carolina to make delivery in accordance with the desire of the complainant.

The court rightfully held that the original contract had not been completed until the cars were delivered. It was admitted that the carrier refused to deliver them at the place requested by the consignee and the consignee refused to accept them at any other place. The case was tried upon the theory that no delivery had taken place and of course it must follow that in such case the original
44 contract being one for interstate transportation, not having been completed, the cars being still under the control of the carrier, the state had no authority over the transaction. In the case at bar a complete delivery had been made and therefore the above case is not applicable.

The case of the Missouri Pacific Railway Company vs. Larabee Mills, 211 U. S. 612, was cited to sustain the contention of respondent. In substance, the facts in the case last above cited are as follows:

Missouri Pacific Railway Company and the defendant Larabee Mills had a controversy over the payment of demurrage, because of the defendant's refusal to pay certain charges. The car service association, which was in charge of the subject for the Missouri Pacific Railway Company and others, directed the railway company to cease and refuse to make further delivery to the Mill Company of empty cars placed upon the transfer track for the use of the Mill Company by the Santa Fe Railroad.

It was conceded that three-fifths of all the cars loaded at the mill were shipped out of the state. The railroad company assumed the position that there could be no separation in fact between that which was wholly interstate and that which was wholly intrastate and therefore it was an interstate transaction and the state had no authority in the premises.

The court, in an opinion by Justice Brewer, which contains a long list of subjects, upon which there had been state legislation and which the courts had upheld, regulating the operation and management of carriers, and which, incidentally, affected interstate traffic, grants the relief asked by the defendant Mill Company and requires the railway company to switch empty and loaded cars from
45 the defendant's mills. The court says, in its opinion:

"Running through the entire argument of counsel for the Missouri Pacific is the thought that the control of Congress over interstate commerce and a delegation of that control to a commission necessarily withdraws from the State all power in respect to regulations of a local character. This proposition cannot be sustained. Until specific action by Congress or the commission the control of the State over these incidental matters remains undisturbed. But it is further contended that this is not a mere incidental matter, indirectly affecting interstate commerce, but directly a part of such commerce, and therefore beyond the power of the state to control, and in support of that McNeill vs. Southern Railway Company, 202 U. S. 343, is referred to."

The court distinguishes between the cases, saying:

"While there is presented, as heretofore indicated, the question of the power of the state to prevent discrimination between shippers, and the common law duty resting upon a carrier was enforced. This common-law duty the State, in a case like the present, may, at least in the absence of Congressional action, compel a carrier to discharge."

We note that in this case, also, there is a dissenting opinion, in which Justices Holmes, Moody and White dissent.

This case sustains the views which we have heretofore expressed when applied to the facts in this case. The theory of respondent, if put into practice, would open the door to unjust and unlawful discrimination in favor of a shipper who is the owner of a pri-
46 vate track as against the one who is compelled to depend upon the public interchange track, and the state has authority to legislate in such a manner as would prevent this discrimination, even if, incidentally, it affects interstate traffic.

The three cases which we have noticed are illustrations of the character of the cases cited by counsel for the respondent. It is unnecessary to attempt any exhaustive review of the numerous decisions of courts which bear upon the issues involved. It will be found that the apparent inconsistencies more frequently are discovered in dicta used in discussing a particular state of facts rather than in the exact statement of principles. No authority has been cited by counsel when applied to such a state of facts as in the case at bar, nor have we been able to find any which is in conflict with our conclusions, that the transactions which are made the basis of the issues in this case are purely local in their character, wholly within the authority of the state to regulate, and entirely free from anything of the nature of an interstate character. We are further of the opinion that if these facts are related in any sense to an interstate transaction, it is only as an incident thereto and the state has authority to regulate the manner in which common carriers shall, within this state, receive and transport cars regardless of where they came from, for the purposes of preventing discrimination, facilitating commerce and relieving shippers from unnecessary burdens.

In accordance with the conclusions heretofore expressed, it is therefore ordered by the Board of Railroad Commissioners of Iowa that upon arrival of loaded cars of coal at the city of Davenport, upon any line of railroad, when said cars are placed upon the
47 interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight paid thereon, and the ordinary billings in use by the respondent railway is tendered to it for a billing of said cars so placed to a point on its own line within the state of Iowa, that the respondent railway company be and is hereby ordered and required to accept said billing, receive said car or cars so billed and transport them on its own line to the point designated by the owner or consignee in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment, and transport said car or cars over its own line to

points within this state, so loaded, without unloading and reloading as above set forth, in the same manner that it receives cars from connecting lines loaded in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined.

It is further adjudged that this order be in full force and effect from and after fifteen (15) days from the date hereof.

Thereupon both parties rested, and after argument of counsel for both parties, the court took the case under advisement, and on the 25th day of August, 1910, rendered and entered the following

Judgment and Decree.

Now on this 25th day of August, 1910, the same being the May, 1910, term of said court, the above entitled cause came on for hearing, H. W. Byers, Attorney General, and George Cosson, appearing on behalf of the state, and William Ellis, J. C. Cook, and
48 J. N. Hughes appearing for the defendant.

The court being duly advised in the premises finds that the equities are with the plaintiff, the State of Iowa. It is therefore ordered, adjudged and decreed by the court that the cross petition of the said defendants be dismissed at defendant's costs.

It is further ordered, adjudged and decreed that the order of the board of railroad commissioners of Iowa is affirmed and the same is hereby held to be in full force and effect.

It is further ordered, adjudged and decreed that a perpetual and mandatory injunction is hereby granted in this cause against the defendant, the Chicago, Milwaukee & St. Paul Railway Company, its officers, agents and employees, and the said defendant, the Chicago, Milwaukee & St. Paul Railway Company, its officers, agents and employees, are hereby commanded and directed to comply with the order of the board of railroad commissioners of Iowa promulgated by said board of railroad commissioners on the 22d day of December, 1909, and the said defendant, its officers, agents and employees are hereby enjoined, commanded and directed upon the arrival of loaded cars of coal at the city of Davenport, Iowa, upon any line of railroad, when said cars are placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars, and the freight paid thereon and the ordinary billing in use by the defendant railway company is tendered to said defendant railway company for a billing of said cars so placed, to a point on its own line within the state of Iowa, to receive said car or cars so billed and transport the same on its own line to the point designated by the owner within the state of Iowa, and that
49 the defendant railway company receive said car or cars in whatever equipment the same may be loaded without requiring an unloading and reloading into its own quipment, and transport said car or cars over its own line to points within this state without unloading and reloading.

Judgment is hereby granted in favor of the plaintiff, the State of Iowa, and against the defendant for the costs of this action taxed at —, including an attorney's fee of $200 for plaintiff's attorney.

To all of which the defendant and appellant duly excepted of record at the time.

That on the 25th day of August, 1910, the defendant duly perfected its appeal to this court by serving upon the attorneys for plaintiff and each of them and upon the Clerk of the District Court of Iowa, in and for Polk County, a good and sufficient Notice of Appeal, and by filing said notice in the office of the said Clerk.

The above and foregoing Abstract is a full, complete and true Abstract of all the record in the above entitled cause.

WM. ELLIS,
COOK, HUGHES & SUTHERLAND,
Attorneys for Appellant.

Notice of Oral Argument.

To H. W. Byers and George Cosson, Attorneys for the above named Appellee:

You are hereby notified that the appellant above named will appear and argue this cause orally upon submission thereof in the Supreme Court.

WM. ELLIS,
COOK, HUGHES & SUTHERLAND,
Attorneys for Appellant.

50 *Certificate of Printing.*

We hereby certify that the cost of printing the foregoing Abstract is $50.00 computed in accordance with the rules of this court.

COOK, HUGHES & SUTHERLAND.

51 In the Supreme Court of Iowa, March Term, 1911.

Filed April 6, 1911.

27764.

STATE OF IOWA
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

From Polk County District Court.

Hugh Brennan, Judge.

Action in Equity to Require the Defendant Company to Obey an Order of the Railroad Commissioners of the State. The Defendant Appeals from a Judgment for the Plaintiff.

William Ellis, Cook, Hughes & Sutherland—for Appellant.
H. W. Byers, Attorney General, and George Cosson, for the State.

SHERWIN, *C. J.*:

The controlling facts in this case are as follows: The Clark Coal & Coke Company, and other companies doing a wholesale coal business

in Davenport, Iowa, had, for a number of years, shipped coal from points in Illinois to themselves as consignees at Davenport, and upon receipt of orders for said coal, they would pay the freight charges of the initial carrier in full, have the cars of coal placed on the interchange track and thereafter tender a written billing for said coal to the defendant company to be shipped to various points in Iowa under the Iowa distance tariff. The defendant company finally refused to receive said coal under such billing unless the same was unloaded and reloaded in its own equipment. Com-
52 plaint was thereupon made to the board of railroad commissioners of the state, and upon a hearing an order was made requiring the defendant to accept said coal for transportation in whatever equipment loaded without requiring a reloading in its own equipment. The defendant railway company refused to comply with the order of the commissioners and this action was thereupon brought to compel compliance therewith. The defendant answered the petition and also filed a cross petition asking that the said order of the board of railroad commissioners be set aside, the substance of the answer and the cross petition being that the order was an attempt on the part of the board to regulate commerce between the several states; that it relates to shipments between the states and not to a shipment originating within the State of Iowa; and further alleging that the board of railroad commissioners was and is without authority to make said order because it is contrary to the provisions of the constitution of the United States. It was also alleged that the board was without authority to require the defendant to accept the cars mentioned and contemplated by said order because the statutes of the state only require it to accept cars from the connecting carrier itself and not from an individual or private person not operating a line of railway. It should first be determined whether, under the facts presented, the shipment tendered to the defendant was an interstate shipment. That the shipment from Illinois to Davenport was such a shipment is unquestioned, but it does not necessarily follow that the shipment tendered to the defendant was merely a continuation of such interstate shipment. There could be an ending of its interstate character by a delivery to the consignee, and thereafter its transportation over the defendant's road from Davenport to some other point within the state would be an intra-state shipment only, so that the primary question for determination is whether there was, in fact, a delivery by the initial carrier to the consignees in Davenport. The agreed statement of facts shows that the coal was originally con-
53 signed to the coal companies in Davenport; that it was held there until sales of the same were made, and that then the consignee paid the freight to the initial carrier and had the cars placed on the interchange track for the purpose of shipping the coal to the purchasers thereof on the line of the defendant's road. The initial carrier had thus surrendered all control over the cars and the consignees had themselves assumed full possession and control over them. The responsibility of the carrier was ended by these acts of the consignees and thereafter they assumed the risks incident

to their possession. We are of the opinion that there was a delivery of the coal to the consignees in Davenport, and that its transportation, under another billing governed by the Iowa distance tariff between two points in the state, is not an interstate shipment, but is an intrastate one that is subject to the laws of the state. The case of Gulf C. & S. F. R. Co. v. Texas, 204 U. S. 403, is directly in point and is decisive of the question. See also Merchants Transfer Co. v. Board of Review, 128 Iowa, 732, and cases cited therein.

The Appellant contends that the decision in R. Co. v. Texas is not controlling here because there the carrier accepted the shipment, but it is clear that the carrier cannot fix the character of a shipment by its act of accepting or rejecting it. The cases relied upon by the appellant to sustain its contention that the shipments in question were interstate are so unlike the instant case in their facts that they are not controlling. In our view of this case, the serious question is whether the board of railroad commissioners had the power under the statute to make an order requiring the defendant to accept the shipment in question in the cars of a private owner or in the cars of another carrier. The board of railroad commissioners seems to have based its order on the following provision of Section 2116 of the Code Supplement: "Every railroad corporation shall * * * furnish cars to any and all persons who shall apply therefor * * * and shall also receive and transport in like manner the empty or loaded cars furnished by any connecting road." But the
54 defendant contends that this statute does not require the acceptance of cars from any person save and except a "connecting road" and that the Clark Coal Company is not a connecting road within the meaning of the statute. A literal construction of this section would undoubtedly sustain the defendant's position, but whether authority for the order be found in this section or not, if such authority is given by other parts of the statute, the order should be sustained. Code Section 2112, says that the board of railroad commissioners "shall have the general supervision of all railroads in the state operated by steam" and Section 2113 provides that, when in the judgment of the board any change in the mode of operating the road or conducting its business" is reasonable and expedient in order to promote the * * * convenience and accommodation of the public, the board shall serve * * * notice upon such corporation * * * of the changes which it finds to be proper." The power of supervision given by Section 2112 is broad, and, in our judgment sufficient warrant alone for the order in question. To supervise is to superintend, to direct, to have charge over, with the power of direction. Webster's International Dictionary.

The Secretary of the Interior, being charged by the United States statutes with the supervision of the office relating to the public lands, was held to have the power to review all the acts of the local officers and to correct and direct a correction of any error committed by them.

Van Tongeven v. Heffernan, 38 N. W. 52 (Dak.). An act, giving a

board of transportation general supervision of railroads, clothes the board with the necessary powers for such purpose.

State v. Fremont E. & M. V. R. Co. 22 Neb. 313. Of course, the power conferred by Section 2112 might be limited in respect to any particular subject, but we find nothing in the statute which seems to impose a limitation on the matter under consideration. On the contrary, the tenor of the entire statute seems to be in harmony with the views above expressed. Section 2113 says that the board
55 shall notify the railroad company of any change in the mode of operating its road or conducting its business that may be considered reasonable and expedient in order to promote the convenience and accommodation of the public. It certainly would be a great inconvenience to the public to be compelled to unload and reload in the defendant's equipment every car of coal that the dealer might wish to send out over the defendant's road, simply because the coal was received by him in cars belonging to a private person or to another road. In State v. Mason City & Ft. Dodge R. Co., 85 Iowa, 516, we held that the railroad commissioners had authority, under the provisions of Section 2113, to order a private crossing for the benefit of the land owner. No just distinction can be made between that case and this one, and hence it is authority for our conclusion that the order in question was authorized by Section 2113. The general intent of the statute is further made manifest by Code Section 2153, which provides that "every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car of cars, if in car load lots * * * and it shall be the duty, upon request of any such owner or consignor of freight, * * * to transport the freight without change of car or cars, if the shipment be in carload lots or lots." The legislature in the statute just quoted evidently recognized the long continued custom of railroads of receiving the cars of other roads for the transportation of freight over their own roads without breaking bulk. It is a custom as general as to be within the knowledge of all men, and it has been practised so long that the courts will take judicial notice of it. B. C. R. & N. Ry. Co. v. Dey, 82 Iowa, 312.

Under the authority of Section 2153, the owner or consignor of freight for shipment from one point to another within the state requires the carrier to transport it without change of cars. We can see no reason why the same requirement should not be
56 held proper under the facts presented here, and we believe that the legislature intended to and did clothe the board with the power to make such a requirement when deemed reasonable and expedient for the convenience and accommodation of the shipper. The fact that section 2116 refers only to cars of connecting roads is not very significant in view of the general powers conferred by sections 2112 and 2113. It probably never occurred to the members of the legislature that a railroad company would refuse to accept

freight in car load lots unless loaded in its own cars. An examination of almost any freight train on any road in the United States would furnish a sufficient reason for a contrary conclusion. We reach the conclusion that the judgment should be and it is affirmed.

Affirmed.

57 APRIL 6, 1911.

STATE OF IOWA, *ss:*

Be it Remembered that at a Term of the Supreme Court of Iowa held at Des Moines, Iowa, on the 6th day of April, 1911, the following, among other proceedings were had and made of record:

No. 27764.

STATE OF IOWA
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

Appeal from Polk District Court.

In this cause, the Court being fully advised in the premises, file their written opinion Affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby Affirmed, and that a writ of procedendo issue accordingly.

It is further considered by the Court that the Appellant pay the costs of this appeal, taxed at $24.00 and that execution issue therefor.

58 In the Supreme Court of Iowa.

September Term, A. D. 1911.

In Equity.

THE STATE OF IOWA, Appellee,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

Appeal from Polk County District Court.

Hon. Hugh Brennan, Judge.

George Cosson, Attorney General, Attorney for Appellee.
Wm. Ellis and Cook, Hughes & Sutherland, Attorneys for Appellant.

Due, legal and timely service of the above entitled and within Petition for Rehearing is hereby acknowledged and copy received this — day of June, A. D. 1911.

——— ———,
Attorneys for Appellant.

Appellant's Petition for Rehearing.

59 The appellant respectfully asks a rehearing herein because the court has fallen into error as regards the real questions involved, and has, in deciding this case, overlooked certain propositions of law and certain admitted facts, which are in our judgment controlling, and if correctly considered must necessarily work a reversal of the judgment of the lower court.

I.

Opinion Appears in 130 N. W. 802.

Statement of the Facts.

1. The record states that the Clarke Coal & Coke Company is operating a branch office at Davenport. But it does not show, as stated in the opinion, that the coal is consigned to this company in Davenport, and "that it was held there until sales of the same were made, and then the consignee paid the freight to the initial carrier, and had the cars placed on the interchange track for the purpose of shipping coal to the purchasers thereof on the line of the defendant's road. The initial carrier had thus surrendered all control over the cars and consignee had assumed full possession and control over them."

In the first place the stipulated facts (Abs. 24, line 18) shows that the coal was not brought into Davenport and there held until purchasers were found for it, and thereafter billed out over the defendant's line, as suggested in the opinion; but the cars immediately upon their arrival at Davenport were re-consigned and sent forward, or requested to be sent forward. The stipulated facts read (Abs. 24, line 18):

"The Clark Coal & Coke Company have been making shipments of coal from points in Illinois to Davenport over the Chicago,
60 Rock Island & Pacific Railway and Chicago, Burlington & Quincy Railway; that said coal is then placed by the railroad bringing it into Iowa on an interchange track at Davenport; that all charges are paid to the railroad company; that thereupon complainant has notified the respondent railway company of the placement of said coal and that it desired to ship said coal," etc.

The thought expressed in the opinion, and upon which the case is made to turn, that it (the coal) "was held there until sales of the same were made," and that because of such holding, and the uncertainty of its future destination, it gained a "citus" or location in Davenport, is nowhere sustained by the record.

On the contrary the record does conclusively and undisputably show that the cars of coal are sent forward from the mine in Illinois, with a definite final destination point in view, and that there is no halting of the shipment in Davenport, but that it is sent forward immediately upon its arrival at that place. We most respectfully submit that the court has made the case turn upon the assumed fact

that there was a halting of the car at Davenport until sales were made before its destination could be determined, and that the coal had thus a fixed citus or location in this State before it was offered to the defendant for transportation.

But the coal could not, under the foregoing statement of facts which we have quoted from the record, have gained a citus in this State.

Kelly vs. Rhodes, 188 U. S. 1.
State vs. Engle, 34 N. J. L. 425.
Interstate C. C. vs. Illinois Central Ry. 215 U. S. 460.

61 2. This court has assumed for the purpose of deciding this case that the placing of the cars upon the "interchange track" was a delivery of the coal to the Clark Coal & Coke Company, and it had thereupon passed wholly without the custody and possession of the initial carrier. As regards this point the court says:

"Then the consignee paid the freight to the initial carrier, and had the cars placed on the interchange track for the purpose of shipping the coal to the purchaser. The initial carrier had thus surrendered all control over the cars, and the consignees had themselves assumed full possession and control over them."

Here the court has again fallen into error as regards the question of possession by the consignee. It must be a matter of such common knowledge that the court will judicially notice, that an interchange track, as understood in the language of railroading, is not a track for the delivery of freight by the carrier to individuals, but is solely used for the delivery of cars from one railroad to another. So long as the car is upon the interchange track it is in the possession of either the "initial" or "connecting carrier" and never in the hands of the consignee. It is not true therefore, as suggested by the court, that the initial carrier had lost control over this shipment and that the consignee had full control and possession of the same, and we respectfully submit that this court has fallen into error in assuming that such was the case.

Suppose that after the car had been placed upon the interchange track, the consignee had delayed in billing it out over the connecting line, would there be any doubt as to the initial carrier's
62 right to take charge of it and send it to the house tracks or storage yards? Or suppose it had been held as suggested by this court until the consignee had found an agreeable buyer, and in consequence thereof there had accrued a bill for demurrage. Would any one say that the car was not in the hands of the initial carrier and that it could not retain possession until the charge accrued on account of demurrage had been paid?

An interchange track is not a place for the delivery of cars to the consignee, and placing the car upon that track does not constitute a delivery, except as it is a delivery to the connecting road.

Covington Stock Yards Co. vs. Keith, 139 U. S. 128.
Hutchinson Carriers (3rd Ed.) 664.
4 Elliott on Railroads, 1517 et seq.

II.

The Shipments Were Interstate Shipments.

A delivery to the consignee is necessary to terminate the interstate character of the shipment. And in this case there was no delivery to the consignee. The interstate character of the shipment was therefore never changed, and it continued an interstate shipment.

McNeill vs. Southern Railway Co., 202 U. S. 543.
Rhodes vs. Iowa, 170 U. S. 412.
Hall vs. DeCuir, 95 U. S. 485-547.
General Oil Co. vs. Given, 209 U. S. 211.

63 If the interstate character of the shipment continued, if no complete and bona fide delivery was made by the initial carrier to the consignee with intention that the property should gain a "citus" in Davenport, then there was a continuation of the interstate character of the shipment, and the decision of this court is erroneous.

III.

Sections 2112 *and* 2113 *of Code and* 2116 *of Code Supplement Unconstitutional.*

The legislature of Iowa had no power to authorize the Board of Railroad Commissioners to make the order in question, and Sections 2116 Code Supplement, and 2112 and 2113 of the Code, are void as being contrary to the Constitution of the United States and the Constitution of Iowa, in that they authorize:

First. The taking of private property without due process of law.

Second. The taking of private property for public use without compensation being first made therefor.

Under the pretense of regulation the State cannot destroy, or do what amounts to the same thing—require a railway company to see its own cars rattling upon its side-tracks while it hauls the cars of other companies, and pays them toll for the use of such cars so involuntarily hauled. If it be suggested that the practical working of the present-day commerce is to equalize the use of cars by the several railways, we have to say that this does not give warrant for the practice which has within itself the possibility of destroy-
64 ing the property of one person while he is paying tribute to some one else. It matters not how small or unimportant the amount which is involved may be, it is the taking of property without due process of law and therefore prohibited by the Constitution of the United States, as well as the Constitution of Iowa.

Railroad Commission Cases, 116 U. S. 307, 331.
Reagn vs. Farmers Loan & Trust Co., 154 U. S. 362.
Attorney General vs. Boston & A. R. Co., 35 N. E. 252.
2 Elliott on Railroads, Sec. 657, et seq.

The cross-petition in this case, as well as the answer, raises the point that "the Board of Railroad Commissioners of Iowa was wholly

without jurisdiction to make said order, and avers that said order is an attempt by the State of Iowa to regulate commerce among the several states contrary to the provisions of the Constitution of the United States," and also "that the said action of the Board of Railroad Commissioners is contrary to the Fourteenth Amendment to the Constitution of the United States because it is in effect the taking of private property for public use without due process of law, and without compensation first being made therefor."

We believe that Sections 2112 and 2113 of the Code, also Section 2116 of the Code Supplement, in so far as they authorize or attempt to authorize the Board of Railroad Commissioners to require the defendant to accept the cars in controversy, and as shown by the
65 statement of facts in this case, are unconstitutional and void, and they do, under the well settled rules of the Supreme Court of the United States, amount to the taking of the defendant's property without due process of law, and without compensation.

We respectfully submit that a hearing should be granted in this case, and that the decree of the lower court should be reversed.

WM. ELLIS,
COOK, HUGHES & SUTHERLAND,
Attorneys for Appellant.

Notice of Oral Argument.

To George Cosson, Attorney for Appellee:

You will please take notice that the appellant will argue the above Petition for Rehearing orally upon the submission thereof.

WM. ELLIS,
COOK, HUGHES & SUTHERLAND,
Attorneys for Appellant.

We hereby certify that the cost of printing the foregoing Petition for Rehearing is $8.00.

COOK, HUGHES & SUTHERLAND.

66 STATE OF IOWA, *ss:*

Be it Remembered that at a Term of the Supreme Court of Iowa held at Des Moines, Iowa, on the 21st day of November, 1911, the following, among other proceedings were had and made of record:

Polk District Court.

27764.

STATE OF IOWA
vs.
C., M. & ST. P. RY. CO., Ap's.

Appellant's Petition for Rehearing, having been fully considered, is overruled.

67 In the Supreme Court of Iowa.

In Equity. No. 27764.

STATE OF IOWA, Appellee,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

Petition for Writ of Error.

To the Honorable Emlin McClain, Chief Justice of the Supreme Court of the State of Iowa:

The petition of the Chicago, Milwaukee & St. Paul Railway Company respectfully shows: That heretofore, upon the 25th day of August, 1910, there was tried in the District Court of Iowa, in and for Polk County, Hon. Hugh Brennan, sole presiding Judge, a cause in which the above named State of Iowa was plaintiff, and the above named Chicago, Milwaukee & St. Paul Railway Company, your petitioner herein, was defendant.

That the declaration of the plaintiff in said case, was a petition alleging that the defendant, the Chicago, Milwaukee & St. Paul Railway Company is a common carrier of freight and passengers, duly incorporated under the laws of the State of Wisconsin, and operating lines of railway in the States of Illinois and Iowa, and other States within the United States, and that its lines of railway extend from Davenport, Iowa, to various points within the State of Iowa.

That for a number of years last past certain Coal Companies have been operating in the City of Davenport, Iowa, and receiving
68 shipments coming to Davenport, Iowa from points in Illinois and other States, via the Chicago, Burlington and Quincy Railroad Company, and the Chicago, Rock Island and Pacific Railway Company. That the method of shipment has been that the within named Coal Companies have consigned coal from initial points in the State of Illinois in their own names to themselves as consignees at Davenport, Iowa; have gone to the local agents and paid the freight charges in full; had the car of coal transferred to the interchange track, and then delivered to the Chicago, Milwaukee & St. Paul Railway Company to be transported to various points in Iowa upon its lines of railway, the charges to be governed by the Iowa distance tariff, the Coal Companies at the time tendering a written billing from Davenport to the point of destination. That the Chicago, Milwaukee & St. Paul Railway Company has changed its method of handling said cars, and refused to receive the same, and would receive said coal only when tendered for shipment in its own equipment.

That on complaint made on or about the 27th day of September, 1909, to the Board of Railroad Commissioners of Iowa, by the above named Coal Companies, said Board of Railroad Commissioners of

Iowa, at a hearing had on the 22nd day of December, 1909, after due notice, made and entered the following order and decree:

"In accordance with the conclusions heretofore expressed, it is therefore ordered by the Board of Railroad Commissioners of Iowa that upon arrival of loaded cars of coal at the city of Davenport, upon any line of railroad, when said cars are placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight paid thereon, and the ordinary billing in use by the respondent railway is tendered to it for a billing of said cars so placed to a point on its own line within the state of Iowa, that the respondent railway company be and is hereby ordered and required to accept said billing, receive said car or cars so billed and transport them on its own line to the point designated by the owner or consignees in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment,
and transport said car or cars over its own line to points
69 within this state, so loaded, without unloading and reloading as above set forth, in the same manner that it receives cars from connecting lines in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined.

"It is further adjudged that this order be in full force and effect from and after fifteen (15) days from the date hereof. Dated, Des Moines, Iowa, this 22d day of December, 1909."

The said petition also alleged a refusal on the part of the Chicago, Milwaukee & St. Paul Railway Company to obey said order and decree, and asked that a mandatory injunction issue out of said District Court of Iowa, in and for Polk County, commanding the Chicago, Milwaukee & St. Paul Railway Company, to fully comply with the order of the Board of Railroad Commissioners of Iowa, promulgated on the 22nd day of December 1909.

Upon the trial of said cause your petitioner, by answer and cross-petition, put in issue the allegations of said declaration, and alleged that the said Board of Railroad Commissioners of Iowa, was wholly without jurisdiction to make said order, and that said order is in fact an attempt by the State of Iowa, to regulate commerce among the several states, contrary to the provisions of the Constitution of the United States, and

"that the said finding and order of said Board of Railroad Commissioners is null and void as against this defendant, and that the same ought not to be enforced, but ought to be set aside and held for naught for the following, among other reasons, to-wit:

(*a.*) The said decision and order of said Board of Railroad Commissioners is void because it is an attempt on the part of said Board to regulate commerce between the several states, and relates to shipments between the states and not to a shipment originating within the State of Iowa.

(*b.*) The said Board of Railroad Commissioners of Iowa was, and is, wholly without authority or jurisdiction to make such order, and said order is in fact an attempt, by the State of Iowa, to regu-

late commerce between the several states, and is contrary to the provisions of the Constitution of the United States.

(c.) The said Board of Railroad Commissioners was without power, under the laws of the State of Iowa, to require the said defendant to accept the cars mentioned and contemplated by and in said order the statutes of Iowa only requiring it to accept the cars from the connecting carrier itself, and not from
70 an individual or private person not operating a line of railway.

(d.) That all of the shipments covered by, or contemplated in said order and decision of said Board of Railway Commissioners were cars that were and are to be brought into the state of Iowa from the state of Illinois over connecting lines, and if the same are to be treated as in the custody and possession of, and as the cars of said connecting lines, then the acceptance of same by the defendant would be, and is, the acceptance of interstate shipments, while if the said cars are to be treated as the cars of, and as under the control of the said shipper, the Clark Coal & Coke Company, then they are not connecting carriers within the contemplation of the laws of Iowa, and said Commissioners have no right or authority to require defendant to accept said shipment except as it shall be loaded in its own cars.

(e). That the said shipments provided in the said order of said Railroad Commissioners are, in fact, interstate shipments, and have not, in fact, been divested of their character of inter-state shipments when they are tendered and offered to the defendant because the tariff filed by the said Chicago, Rock Island & Pacific Railway, and Chicago, Burlington & Quincy Railway, as well as those of the defendant have been filed with the Inter-State Commerce Commission and are authorized by the Inter-state Commerce laws of the United States, and require, and make the shipment incomplete, until the shipment is unloaded and the said tariffs authorize and compel the collection of the demurrage at the rate of $1.00 a day until the shipment is unloaded from the car, and the said shipment is, and remains an inter-state shipment until the shipment is in fact unloaded from the car.

(b). That the said action of the Board of Railroad Commissioners is contrary to the Fourteenth amendment of the Constitution of the United States, because it is, in effect, the taking of private property for public use, without due process of law, and without compensation first being made therefor, and if put into effect will, in effect, be the taking of private property without due process of law, and without compensation, all contrary to the Constitution of the United States in such case made and provided.

(g). That the same is also contrary to the Inter-state Commerce laws, and laws of the United States regulating Inter-state commerce, and commerce between states and territories."

Also asking that plaintiff's petition be dismissed, and affirmative relief to the effect that said order and decree on the part of the Railroad Commissioners of Iowa be set aside.

That upon hearing and trial said petition was sustained and the

answer and cross-petition of your petitioner were denied and judgment and decree entered granting all relief asked by plaintiff,
71 and denied all relief asked by your petitioner. Whereupon said defendant, Chicago, Milwaukee & St. Paul Railway Company took an appeal to the Supreme Court of Iowa, that being the highest Court of Law or Equity of said State of Iowa, in which a decision could be had in said case, and assigned as errors:

First. That said decision and order of said Board of Railroad Commissioners is void because in effect it is a regulation of commerce between the several States, and an interference by the State of Iowa with interstate commerce.

Second. That the said Board of Railroad Commissioners was, and is, without authority or jurisdiction to make said order requiring the Chicago, Milwaukee & St. Paul Railway Company to accept the cars and equipment of other lines of railway, because it is in effect, the regulation of interstate commerce by the State of Iowa.

Third. The Court erred in failing and refusing to find and decree that the decision and order of the Board of Railroad Commissioners of December 22, 1909 in controversy herein, is void, because it is an attempt on the part of said Board to regulate commerce between the several States, and relates to shipments between the States, and not to shipments originating in the State of Iowa.

Fourth. The Court erred in failing and refusing to find and decree that the Board of Railroad Commissioners of Iowa, was, and is, without authority or jurisdiction to make the said order on December 22, 1909, and the said order is an attempt by the State of Iowa to regulate commerce between the several states, and is contrary to the provisions of the Constitution of the United States.

72 Fifth. The Court erred in holding that the Board of Railroad Commissioners of the State of Iowa had authority to make the order of December 22, 1909, for the said order was void as being contrary to the 14th Amendment to the Constitution of the United States, because it is in effect the taking of private property for public use without due process of law.

Sixth. The Court erred in holding that the order of the Board of Railroad Commissioners of the State of Iowa, made December 22, 1909, was not contrary to the 14th Amendment to the Constitution of the United States, as being in effect, the taking of private property for public use, without compensation first being made therefor.

Seventh. The Court erred in refusing to hold that the order of the Board of Railroad Commissioners of the State of Iowa, made December 22, 1909, was void as being contrary to the Constitution of the United States, because it takes private property without due process of law, and without compensation.

Eighth. The order of the Board of Railroad Commissioners of the State of Iowa of December 22, 1909, is void ab initio, since it seeks to compel the retention of an interstate vehicle, namely the cars containing the coal, and thereby to burden the interstate carriers owning the interstate vehicles with state commerce requirements, at a time when it may need such vehicles for interstate commerce.

Ninth. The order of the Board of Railroad Commissioners made

December 22, 1909, is void and contrary to the 14th Amendment to the Constitution of the United States in that it has the effect to require the defendant to use the cars and equipment of other railway companies, while its own equipment lies idle, and by such indirect methods, has the effect of the taking of private property for public use, without due process of law, and without compensation first being made therefor.

73 And your petitioner alleged and contended by said answer and cross petition upon said trial in said trial court, as well as in the Supreme Court of Iowa, that the said order was in violation of the laws of the United States, and of the Constitution of the United States as therein stated, and each of said allegations in said District Court, and each of said errors assigned in said Supreme Court raised and presented a Federal question in said case, namely:

(*a*). Whether the said order of the Board of Railroad Commissioners deprived appellant of its property without due process of law, and was in effect the taking of private property for public use without due process of law.

(*b*). Whether the said order of the Board of Railroad Commissioners deprived appellant of the equal protection of the law.

(*c*). Whether the said order of the Board of Railroad Commissioners was an interference by the State of Iowa with interstate commerce.

(*d*). Whether the said order of the Board of Railroad Commissioners was in effect an attempt on the part of the State of Iowa to regulate commerce between the States.

At the April Term 1911 of the Supreme Court of Iowa, the said cause came on to be heard, and was argued in said Supreme Court, which said Court on April 6th, 1911, rendered its final judgment thereon affirming the judgment of the court below, namely: the District Court of Iowa in and for Polk County.

Petitioner further shows that the said judgment of said Supreme Court was and is a final judgment in the highest court of the State of Iowa, in which a decision in said suit could or can be had. That in said final order and judgment and the proceedings had prior thereto in this case certain errors were

74 committed to the prejudice of the Chicago, Milwaukee & St. Paul Railway Company, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Petitioner further shows that a Federal question was made in said case as hereinbefore set out, wherein was drawn in question the validity of a law and authority exercised under the State of Iowa on the ground of said law and authority being repugnant to the Constitution of the United States, and to the laws of the United States, and the decision of said Supreme Court of Iowa was in favor of said law and authority, and that a decision of said Federal question was necessary to the judgment rendered.

Wherefore your petitioner prays that a Writ of Error to said Supreme Court be allowed; that citation be granted and signed; and that the bond herewith presented be approved; and upon compliance with the terms of the statutes in such cases made and provided said

bond and Writ of Error may operate as a supersedeas; that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment and decree aforesaid of said Supreme Court of Iowa, be reversed.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.,
By COOK, HUGHES & SUTHERLAND,
Its Solicitors.

BURTON HANSON,
O. W. DYNES,
J. C. COOK,
C. R. SUTHERLAND,
JOHN N. HUGHES,
Attorneys and of Council for Plaintiff in Error.

75 In the Supreme Court of Iowa.

STATE OF IOWA, Appellee,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant.

The above entitled matter coming on to be heard upon the petition of the appellant herein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Iowa, and upon examination of said petition and the record in said matter, and desiring to give the petitioner opportunity to present in the Supreme Court of the United States the questions presented by the record in said mattter.

It is ordered that a Writ of Error be, and is hereby, allowed to this court from the Supreme Court of the United States, and to operate as a supersedeas, and that the bond presented by said petitioner be, and the same is hereby, approved.

Dated January 2nd, 1912.

EMLIN McCLAIN,
Chief Justice of the Supreme Court of the State of Iowa.

76 *Writ of Error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Supreme Court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in a plea, which is in the said Supreme Court of the State of Iowa, before you, or some of you being the highest court of law or equity of the said state in which a decision could be had in the said suit between the State of Iowa and the Chicago, Milwaukee & St. Paul Railway Company, wherein was drawn in question the validity of a statute of, and authority exercised under said state, on the ground of their being repugnant to the Constitution and laws of the United

States, and the decision was in favor of the authority exercised thereunder, and against the right, specially set up and claimed under said clause of said Constitution, a manifest error hath happened, to the great damage of the Chicago, Milwaukee & St. Paul Railway Company, as by its complaint appears, and we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d day of February, 1912, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States
77 may cause further to be done therein, to correct — what of right and according to the laws and customs of the United States should be done.

Witness Hon. Edward M. White, Chief Justice of the said Supreme Court, the 3d day of January, in the year of our Lord nineteen hundred & twelve.

[Seal U. S. District Court, Southern District of Iowa.]

WM. C. McARTHUR,
Clerk of the District Court of the United States for the Southern District of Iowa.

Approved by—
EMLIN McCLAIN,
Chief Justice of the Supreme Court of Iowa.

78 In the Supreme Court of Iowa.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Plaintiff in Error,
vs.
STATE OF IOWA, Defendant in Error.

Assignment of Errors on Writ of Error from Supreme Court of the United States to the Supreme Court of Iowa.

Now comes the said plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment and decree of the Supreme Court of the State of Iowa, in the above entitled matter and cause there is manifest error in this to-wit:

First. That said decision and order of said Board of Railroad Commissioners is void because in effect it is a regulation of commerce between the several States, and an interference by the State of Iowa with interstate commerce.

Second. That the said Board of Railroad Commissioners was, and is, without authority or jurisdiction to make said order requiring the Chicago, Milwaukee & St. Paul Railway Company to accept the cars

and equipment of other lines of railway, because it is in effect, the regulation of interstate commerce by the State of Iowa.

Third. The Court erred in failing and refusing to find and decree that the decision and order of the Board of Railroad Commissioners of December 22, 1909, in controversy herein, is void, because it is an attempt on the part of said Board to regulate commerce
79 between the several States, and relates to shipments between the States, and not to shipments originating in the State of Iowa.

Fourth. The Court erred in failing and refusing to find and decree that the Board of Railroad Commissioners of Iowa, was, and is, without authority or jurisdiction to make the said order on December 22, 1909, and the said order is an attempt by the State of Iowa to regulate commerce between the several states, and is contrary to the provisions of the Constitution of the United States.

Fifth. The Court erred in holding that the Board of Railroad Commissioners of the State of Iowa had authority to make the order of December 22, 1909, for the said order was void as being contrary to the 14th Amendment to the Constitution of the United States, because it is in effect the taking of private property for public use without due process of law.

Sixth. The Court erred in holding that the order of the Board of Railroad Commissioners of the State of Iowa, made December 22, 1909, was not contrary to the 14th Amendment to the Constitution of the United States, as being in effect, the taking of private property for public use, without compensation first being made therefor.

Seventh. The Court erred in refusing to hold that the order of the Board of Railroad Commissioners of the State of Iowa made December 22, 1909, was void as being contrary to the Constitution of the United States, because it takes private property without due process of law, and without compensation.

Eighth. The order of the Board of Railroad Commissioners of the State of Iowa of December 22, 1909, is void ab initio, since it seeks to compel the retention of an interstate vehicle, namely the cars containing the coal, and thereby to burden the interstate carriers owning the interstate vehicles with state commerce requirements, at a time when it may need such vehicles for interstate commerce.
80 Ninth. The order of the Board of Railroad Commissioners made December 22, 1909, is void and contrary to the 14th Amendment to the Constitution of the United States in that it has the effect to require the defendant to use the cars and equipment of other railway companies, while its own equipment lies idle, and by such indirect methods, has the effect of the taking of private property for public use, without due process of law, and without compensation first being made therefor.

Tenth. The Court erred in refusing and failing to hold that the order of the Board of Railroad Commissioners of the State of Iowa made December 22, 1909, was void and of no effect, because it was and is in effect the regulation of commerce between the States by the State of Iowa.

Eleventh. The Court erred in refusing and failing to hold that

the order of the Board of Railroad Commissioners of the State of Iowa made December 22, 1909, was void and of no effect, because it was and is in effect, an interference on the part of the State of Iowa with interstate commerce, contrary to the laws and Constitution of the United States.

Twelfth. The Court erred in refusing and failing to hold that the order of the Board of Railroad Commissioners of Iowa made December 22, 1909, was void and of no effect, because it relates to shipments made between the several states by interstate carriers and is therefore an interference by the State of Iowa with interstate commerce.

Thirteenth. The Court erred in refusing and failing to hold that the said order of the Board of Railroad Commissioners of Iowa made December 22, 1911, is contrary to and in violation of the laws of the United States in that it has the effect of regulation by the State of Iowa, of commerce between the several states.

Fourteenth. The Court erred in holding that the inter-
81 state character of the shipments contemplated by said order of the Board of Railroad Commissioners of Iowa, made December 22, 1909, had ceased when the cars were placed upon the interchange track, when the said cars were in fact placed upon said interchange track not as a delivery to the shipper, but as a delivery to an interstate connecting carrier.

Fifteenth. The Court erred in holding that the interstate character of the shipments contemplated and covered by the order of the Board of Railroad Commissioners of Iowa, made December 22, 1909, had ceased when the cars were placed on an interchange track, because the said method of handling traffic has the effect of discrimination in favor of one interstate shipper who makes two billings, and against other interstate shippers who make through billings.

Sixteenth. The Court erred in holding that the order of the Board of Railroad Commissioners of Iowa, made December 22, 1909, was valid because the same has the effect to discriminate in favor of interstate shippers maintaining an office and agency in the City of Davenport, Iowa, where their agents can cause the second billing to be made on each of said shipments.

Seventeenth. The Court erred in holding that the interstate shipper could by the indirect method of rebilling his interstate shipment at Davenport, Iowa, obtain a lower and better rate than the rate filed with the Interstate Commerce Commission by the two interstate carriers over which the shipment is intended to pass.

Dated this 24th day of December, 1911.

BURTON HANSON,
J. C. COOK,
C. R. SUTHERLAND,
O. W. DYNES, &
JOHN N. HUGHES,
Attorneys and Counsellors for Plaintiff in Error.

82 In the Supreme Court of Iowa.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Plaintiff in Error,

vs.

STATE OF IOWA, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents, That we, Chicago, Milwaukee & St. Paul Railway Company as principal and Glenn M. Averill and R. A. Wallace as Sureties, are held and firmly bound unto the State of Iowa in the sum of One Thousand ($1,000.00) Dollars to be paid to said obligee, its representatives and assigns; to the payment of which well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 27th day of December, 1911.

Whereas, the above named plaintiff in error hath prosecuted a Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Iowa.

Now therefore, the condition of this obligation is such that if the above entitled plaintiff in error shall prosecute its said Writ of Error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.,
By JOHN N. HUGHES,
By Its Assistant Solicitor, GLENN M. AVERILL,
R. A. WALLACE.

Signed & Sealed in presence of—
CHARLES R. SUTHERLAND,
LEROY AUSTIN WALLACE.

83 STATE OF IOWA,
Linn County, ss:

We, Glenn M. Averill and R. A. Wallace, being first duly sworn on oath, each, for himself, says that he is a citizen and freeholder of the State of Iowa, and has property within said State over and above his debts, and subject to execution in double the amount of the above named bond.

GLENN M. AVERILL.
R. A. WALLACE.

Subscribed and sworn to before me by the said Glenn M. Averill and the said R. A. Wallace this 27" day of December, 1911.

[Notarial Seal, John N. Hughes, Iowa.]

JOHN N. HUGHES,
Notary Public in and for Linn County.

I hereby approve the above and foregoing bond and the Sureties thereon this 2d day of January, 1912.

EMLIN McCLAIN,
Chief Justice Supreme Court of the State of Iowa.

Acceptance of Service.

84 In the Supreme Court of the State of Iowa.

STATE OF IOWA, Appellee and Defendant in Error,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellant, Plaintiff in Error.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the State of Iowa:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the State of Iowa, wherein the Chicago, Milwaukee & St. Paul Railway Company is Plaintiff in Error and you are Defendant in Error to show cause, if any there be, why the judgment and decree rendered against the said Plaintiff in Error as in said Writ of Error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Emlin McClain, Chief Justice of the Supreme Court of the State of Iowa, this 2nd day of January in the year of our Lord one thousand nine hundred and twelve.

EMLIN McCLAIN,
Chief Justice of the Supreme Court of the State of Iowa.

Service of the foregoing citation is hereby accepted and copy thereof received this 3rd day of January, A. D. 1912, at Des Moines, Iowa.

GEORGE COSSON, *Att'y Gen'l,*
Attorney for Defendant in Error.

85 STATE OF IOWA, *ss:*

I, B. W. Garrett, Clerk of the Supreme Court of Iowa, hereby certify that the foregoing pages contain true and complete copies of the Record, Opinion, Final Judgment, Petition of Rehearing and ruling on same in the case of the Chicago, Milwaukee & St. Paul Railway Company, Plaintiffs in Error, against the State of Iowa, Defendants in Error, as true and complete as the same now appear and remain on file and of record in this office.

I further certify that the Petition for writ of error, writ of error,

assignment of errors, Supersedeas Bond, with order of approval thereon, and citation with acceptance of service thereon, are hereto attached in original form, and that true and correct copies of same have been retained in this office, and this return is made in obedience to said writ.

In testimony whereof my name and the Seal of said Court hereto attached this 15th day of January, 1912.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk Supreme Court of Iowa.

Endorsed on cover: File No. 23,032. Iowa Supreme Court. Term No. 176. Chicago, Milwaukee & St. Paul Railway Company, plaintiff in error, vs. The State of Iowa. Filed January 25th, 1912. File No. 23,032.

10

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1913.

No. 176

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

O. W. DYNES,
C. S. JEFFERSON,
Attorneys.

BURTON HANSON,
Of Counsel.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

SUBJECT INDEX.

List of Cases Cited.

IN THE

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CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

MAY IT PLEASE THE COURT:

The principal question here presented for decision is:

Has a railroad company the legal right to require carload shipments originating on its lines to be loaded into cars owned by it?

Or, to state the same question in another form:

May the shipper of a carload compel the carrier to maintain the carrier's own cars in idleness and disuse, and use in their stead a car selected and designated by the shipper, for the use of which the carrier must pay the owner a per diem or car rental compensation?

STATEMENT OF THE CASE.

During the year 1909 the Chicago, Milwaukee & St. Paul Railway Company, plaintiff in error, refused to accept certain carload shipments of coal for transportation from Davenport, in the State of Iowa, to other points in the same state. The record shows that the carrier's reason for refusing to accept and transport those carload shipments was that the shipments in question were tendered to it by the shipper in cars of other railroad companies instead of in its own cars. The record also shows, and it is undisputed, that the plaintiff in error was ready, willing and desirous to furnish its own cars in which to receive and transport the shipments in question. The shippers, however, insisted upon the plaintiff in error using foreign equipment, refused to load their shipments into the equipment of the plaintiff in error and invoked the aid of the Railroad Commissioners of Iowa to compel the plaintiff in error to employ the equipment of foreign lines, instead of its own, in which to receive and transport in its trains, over its rails, their shipments.

At the instance of the shippers, the Railroad Commissioners of the State of Iowa entered an order requiring and directing the plaintiff in error to use, instead of its own cars, which it offered and desired to use, cars designated by the shippers. (Rec., 3-4.)

The plaintiff in error disregarded the order of the Board of Railroad Commissioners of Iowa, whereupon the State of Iowa, by its proper officers in that behalf, filed in a District Court of that state, a bill for a man-

datory injunction, in which the plaintiff in error was made defendant. (Rec., 1-5.) The defendant answered (Rec., 5-6) and also filed its cross-petition (Rec., 6-10), to which cross-petition no answer, reply or other pleading was filed.

The issues as fixed by the pleadings presented the following questions:

First. Was the order of the Board of Railroad Commissioners of Iowa void *ab initio* as an unlawful deprivation of the defendant's lawful right to contract?

Second. Was the order of the Board of Railroad Commissioners of Iowa void *ab initio* because of being in conflict with the fifth and fourteenth amendments of the Federal Constitution, in that its effect would be to take property without due process of law?

Third. Was the order of the Board of Railroad Commissioners of Iowa void *ab initio* because its enforcement would constitute the placing of a burden upon interstate commerce through the attempted regulation of intrastate commerce by the State of Iowa?

Fourth. Was the order of the Board of Railroad Commissioners of Iowa void *ab initio* because its enforcement would necessarily entail the regulation of interstate commerce by the State of Iowa under the guise of, or as incident to the regulation of intrastate commerce?

Fifth. Was the order of the Board of Railroad Commissioners of Iowa void because it had the effect of depriving the defendant of its common law rights without statutory authority for so doing?

The evidence consisted of a stipulated statement of facts (Rec., 14), in which it was admitted that the defendant was ready, willing and able to furnish its own cars

for the transportation of the carload shipments in question (Rec., 14); also that the defendant refused to accept and transport the shipments in the cars of a foreign line; and also admitted that the shippers insisted upon their carload shipments being moved by the defendant in cars belonging to other carriers; and in which it was admitted that the defendant, for a time, had consented to and did move such shipments in the cars of a foreign line or foreign lines, and that the defendant discontinued said practice and refused to resume.

On the pleadings and facts thus before the District Court, it entered an order in the nature of a judgment and decree (Rec., 26) finding the equities with the plaintiff, dismissing the cross-petition of the defendant, affirming the order of the Board of Railroad Commissioners of Iowa, and decreeing a perpetual mandatory injunction against the defendant, its officers and agents, whereby it and they were commanded and directed to comply with the order of the Board of Railroad Commissioners of Iowa. Judgment was also entered against the defendant for attorney's fees and costs. (Rec., 26.) Exception was duly taken by the defendant (Rec., 27) and appeal perfected to the Supreme Court of the State of Iowa. (Rec. 27.) Upon a hearing in that court the judgment of the District Court was affirmed. (Rec., 31.) The appellant's petition for re-hearing was overruled. (Rec., 35.)

To review the judgment of the Supreme Court of Iowa, the case was brought to this court on writ of error.

Specifications of Errors Relied Upon.

First. The Supreme Court of the State of Iowa erred in affirming the judgment and decree of the District Court of said state commanding and requiring plaintiff in error herein to conform to and obey a certain order of the Board of Railroad Commissioners of Iowa, which order deprives plaintiff in error of the right of freedom to contract, in this: That said order, by its terms, seeks to compel plaintiff in error, against its will, to hire or rent cars tendered or designated by the shipper, thus fastening upon plaintiff in error the obligation to contract for the use of particular specific cars, and denying to it the privilege of contracting in the open market for such cars, or furnishing such cars itself.

Second. The Supreme Court of the State of Iowa erred in affirming the judgment and decree of the District Court of said state commanding and requiring plaintiff in error herein to conform to and obey a certain order of the Board of Railroad Commissioners of Iowa, which said order deprives plaintiff in error of its property without due process of law, in violation of the fifth and fourteenth amendments of the Constitution of the United States, in this: That the said order of the Board of Railroad Commissioners of Iowa has the effect of compelling plaintiff in error to maintain its own coal cars in a state of disuse and idleness and pay out to the owners of other cars a consideration for the use of cars so owned by others, at a time when and under circumstances such that plaintiff in error could, if permitted, use its own cars and save to itself the expense of hiring and paying for cars of another so imposed upon it by said order.

Third. The Supreme Court of the State of Iowa erred in affirming the judgment and decree of the District Court of said state commanding and requiring plaintiff in error herein to conform to and obey a certain order of the Board of Railroad Commissioners of Iowa, the enforcement of which order results in placing a burden on interstate commerce under the guise of regulating commerce within the State of Iowa, contrary to the Act to Regulate Commerce passed by the Federal Congress, and contrary to the commerce clause of the Federal Constitution, in this: That the enforcement of the said order of the Board of Railroad Commissioners of Iowa would have the effect of confiscating the vehicles of interstate commerce, taking them out of interstate commerce and devoting them to intrastate commerce.

Fourth. The Supreme Court of the State of Iowa erred in affirming the judgment and decree of the District Court of said state commanding and requiring plaintiff in error herein to conform to and obey a certain order of the Board of Railroad Commissioners of Iowa, the enforcement of which order would be in effect the regulating of interstate commerce by the State of Iowa, in this: That the enforcement of said order would entail taking vehicles of interstate commerce from interstate carriers and out of the channels of interstate commerce and devoting such vehicles entirely to the commerce of the State of Iowa.

Fifth. The Supreme Court of the State of Iowa erred in affirming the judgment and decree of the District Court of said state commanding and requiring the plaintiff in error herein to conform to and obey a certain order of the Board of Railroad Commissioners of Iowa, which order assumes to direct and control plaintiff in

error against its wishes and desires in the matter of and manner of receiving carload shipments, and in respect of the time, place and conditions under which it shall receive such shipments, contrary to the common law and without statutory authority for such direction and control.

BRIEF OF ARGUMENT.

It is the contention of plaintiff in error that the order of the Board of Railroad Commissioners of the State of Iowa which was made the subject of review in the state courts of Iowa would, if enforced, deprive the plaintiff in error of its common law rights to furnish its own cars in its business as a common carrier, or to freely contract on the open market for cars that it might desire to use.

It is conceded, of course, that a state may enact statutory laws in abrogation of the common law, and that a state commission acting within its proper field, may disregard such of the common law as the statutes of that state have abrogated. It is, however, insisted that in this case no statutes of the State of Iowa have abrogated or nullified the common law in its aspects here under consideration.

The owner of these cars charged a compensation for their use, which would have to be paid by the plaintiff in error if it used them. (Rec., 16.) It was also admitted of record and undisputed that the plaintiff in error was able, willing and desired to furnish its own cars for receiving and transporting those shipments. (Rec., 14.)

It is the contention of plaintiff in error that under such conditions, the Board of Railroad Commissioners of the State of Iowa, and the courts of that state could not construct contracts or impose contracts on the plaintiff in error which would restrict it in respect of whom it might rent cars from, and which would oblige it to rent and pay for cars when it could and desired to furnish its own cars instead.

In *Central Stockyards* v. *Louisville & Nashville Ry. Co.*, 192 U. S., 571, the court said:

> "Courts have no authority to dictate a contract to the defendant, or to require it to make one."

Citing, among others:

> *Atchison, Topeka & Santa Fe R. R.* v. *Denver & New Orleans R. R.*, 110 U. S., 667, at page 680.

In the latter case the court said:

> "At common law a carrier is not bound to carry except on his own line, and we think it quite clear if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. * * * He certainly may select his own agencies and his own associates for doing his own work."

Under the statutes of Iowa it is only where a car is received from a connecting line that the carrier receiving it is compelled to use such car in lieu of its own car for the transportation of the shipment therein contained.

Section 2116 of the Code of Iowa provides:

> "Every railway corporation shall, when within its power to do so, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and receive and transport such freight, with all reasonable dispatch, and provide and keep suitable facilities for the receiving and handling thereof at any depot on the line of its road; and shall also receive and transport in like manner the empty or loaded cars furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged or reloaded and returned to the road so connecting; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a similar service."

Section 2153 of the supplement—Code of Iowa, 1907—reads in part as follows:

> "Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars, if in carload lots * * * and it shall be the duty, upon request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in a carload lot or lots."

There being no connecting line involved as to the shipments in the case at bar, but only a single line haul over the rails of the plaintiff in error alone, the Iowa statutes cited do not apply, and in the absence of abrogating legislation, the common law extends to the plaintiff in error the right to decline to use cars of other carriers and insist upon using its own cars.

> *Oregon Short Line & U. N. Ry. Co.* v. *Northern Pacific R. Co.*, 51 Fed. Reptr., 465, at page 472.
>
> *Central Stockyards* v. *Louisville & Nashville Ry. Co.*, 192 U. S., 568, at page 571.
>
> *Atchison, Topeka & Santa Fe R. R.* v. *Denver & New Orleans R. R.*, 110 U. S., 667, at page 680.

The fact that the carload shipments in question had undergone previous transportation, did not make the previous carriers *connecting* carriers with the plaintiff in error, for the previous contract of transportation had been consummated, the cargoes had reached their desti-

nation, and the consignee had paid the freight thereon and claimed physical possession of them.

Gulf, Colorado & Santa Fe Ry. Co. v. *Texas,* 204 U. S., 403.

If it be not admitted that the previous carriage had been terminated and that the previous carrier is not a connecting carrier, then it would follow that these carloads of coal having been carried originally from Illinois to Davenport, Iowa, would have the character of interstate commerce, and, therefore, not subject to regulation by the State of Iowa.

Coe v. *Errol,* 116 U. S., 517.

Southern Pacific Terminal Co. v. *Interstate Commerce Commission and Young,* 219 U. S., 498.

Ohio R. R. Comm. v. *Worthington,* 225 U. S., 101.

Texas & New Orleans R. R. Co. v. *Sabine,* 227 U. S., 111.

An order made by a state commission under assumed authority of the state, which directly burdens or regulates interstate commerce will be enjoined.

McNeill v. *Southern Railway Co.,* 202 U. S., 543.

In ordering the Chicago, Milwaukee & St. Paul Railway Company to take and use the cars of the interstate carrier which brought the coal from Illinois to Davenport, Iowa, the Board of Railroad Commissioners of the State of Iowa exceeded its powers in that it placed a burden on interstate commerce by depriving the interstate carrier of its vehicles of interstate commerce as an incident of the attempt to regulate intrastate commerce.

Article I, Section 8, Constitution of the United States.

Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce," 24 St. p. 379, c. 104, and acts amendatory thereof and supplementary thereto.

Central Stock Yards v. *Louisville & Nashville Ry. Co.*, 192 U. S., 568, at page 571.

Louisville & Nashville Ry. Co. v. *Central Stockyards*, 212 U. S., 132, at page 144.

Southern Ry. Co. v. *United States*, 222 U. S., 20, 26.

Minnesota Rate Cases, 230 U. S., 352, 400.

The order of the Iowa Commission necessarily involves either taking from the interstate carrier its cars without compensation, or denying to plaintiff in error, the privilege of supplying and using its own cars, with the consequence that its cars remain idle, and it is obliged to pay for the foreign cars. Either view of the significance of the order involves the taking of property without due process of law, contrary to the fourteenth amendment to the Constitution of the United States.

See *Missouri Pacific Company* v. *Nebraska*, 164 U. S., 403, 417, wherein the court said:

> "The taking by a state of the private property of one person or corporation without the owner's consent, for the private use of another, is not due process of law, and is a violation of the fourteenth article of amendment of the Constitution of the United States."

See, also:

Allgeyer v. *Louisiana*, 165 U. S., 578, 589.

Coal cars used in interstate commerce are instruments of such commerce, and regulating their use is regulating interstate commerce.

See *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S., 452, 474, wherein the court said:

> "It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation, which extends in time of car shortage to compelling just and equal distribution, and the prevention of an unjust and discriminatory one."

See also

So. Ry. Co. v. *U. S.*, 222 U. S., 20, 26.

Nor. Pac. Ry. Co. v. *State of Washington*, 222 U. S., 370, 377.

The Congress of the United States having extended governmental regulations to include the use and distribution of coal cars used in interstate commerce, state regulation of the same is thereby excluded.

Minnesota Rate Cases, 230 U. S., 352, 400.

Northern Pacific Ry. Co. v. *State of Washington*, 222 U. S., 370, 378.

Smith v. *Alabama*, 124 U. S., 465, 473.

McCulloch v. *Maryland*, 4 Wheat, 415, 426.

The order of the Board of Railroad Commissioners of Iowa deprives plaintiff in error of the equal protection of the laws in contravention of the Constitution of the United States.

Lake Shore & M. S. Ry. Co. v. *Smith*, 173 U. S., 684, 698.

ARGUMENT.

Two questions arise at the very outset, namely:

First. Why did the shippers insist upon the plaintiff in error using foreign cars to transport their coal instead of its own cars?

Second. Why did the plaintiff in error refuse to transport the foreign cars and insist upon using its own cars?

A brief and general consideration of these questions will make somewhat more clear the discussion of the underlying questions and principles involved.

The record shows that the carload shipments of coal involved in this litigation originated at points in the State of Illinois from whence they were transported, interstate, to Davenport, Iowa, and thence transported to final destinations in Polk County, Iowa, over an intrastate route. The interstate tariff rates on carloads of coal from points of origin in Illinois to final destinations in Polk County, Iowa, were and are respectively higher than the respective aggregate rates made by adding the Iowa distance tariff rate from Davenport to a given point of destination in Polk County, Iowa, to the interstate rate from a given point of origin in Illinois to Davenport, Iowa. Doubtless, because of this difference in rates and because of merchandising conditions as well, the shipper of this coal planned to accomplish its transportation in two disconnected parts,—the first being the interstate shipment to be consummated and terminated at Davenport,—then, the intrastate shipment beyond.

Had the shipper routed and consigned those carloads from point of origin to the ultimate destination over a joint through route, the cars into which the coal was originally loaded at the mines would undoubtedly have been taken through to the final destination in Polk County, Iowa. It would have been obligatory on the carriers to take them through under the Act to Regulate Commerce as it has been construed and applied by the Interstate Commerce Commission in *Missouri & Illinois Coal Company* v. *Illinois Central R. R. Co.*, 22 I. C. C. Rep. 39. At page 46 of its opinion the Commission says:

> "The duty of the initial carrier to furnish equipment for a shipment which moves on to other lines is universally recognized and in cases where that is impracticable or deemed unwise, the carriers assume to bear the burden of the transfer from the equipment of one line to that of the other. By agreement the carriers have fixed the rental value of a car for their own purposes at thirty or thirty-five cents a day. That rental, together with the rules governing the movement of foreign equipment (equipment not belonging to the line upon which it stands) is presumed to secure the return to the initial carrier of its own equipment. * * * If, however, as in this case, it is seen that the methods pursued by the carriers relating to the return of equipment are not such as to protect shippers against discrimination and injustice, this Commission may undertake to prescribe the conditions under which these through routes shall be maintained, for it is provided (section 15 of the Act to Regulate Commerce):
>
> 'That whenever the Commission shall be of the opinion that any individual or joint regulation or practice whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable, or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation

of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what individual or joint regulation or practice is just, fair and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall conform to and observe the regulation and practice so prescribed.'

Clearly the Illinois Central and its connections have not obeyed the mandate of the law as found in section 1. The remedy is found in an apppeal to this Commission under section 15, as above quoted. The power here lodged in the Commission as to the control and regulation of railroad practices has been exercised but seldom by this Commission, but our authority to so regulate and control practices has been given the fullest confirmation in two masterful decisions of the Supreme Court written by Mr. Chief Justice White. *Interstate Commerce Commission* v. *I. C. R. R. Co.*, 215 U. S., 452; *Baltimore & Ohio R. R. Co.* v. *United States ex rel. Pitcairn Coal Co.*, 215 U. S., 481."

The fact that the shippers did not bill their carload shipments through from the Illinois mines to the ultimate destinations contemplated in Polk County, Iowa, and thus have the benefit of the Federal Act which would compel hauling the cars of the initial carrier through to destination must be accounted for by some objection or objections in the minds of the shippers to having the shipments move as interstate shipments from point of original loading to the ultimate destinations. Whether this was due wholly to a desire to get a lower rate than the interstate rate, or wholly to the desire to have the carload shipments free to reconsign at Davenport to whichever point of final destination a purchaser might be found at, or whether it was due in part to each of these rea-

sons, is not a matter of vital importance, but the record makes it clear that it was the desire of the shipper to terminate the interstate shipments when the cars reached Davenport.

Whether the refusal of the plaintiff in error to use hired cars instead of its own, was founded wholly on its objection to paying car rental to a foreign line while its own cars remained idle, or was founded wholly on a desire to get the benefit of the higher freight rates that the shipper would have to pay if compelled to bill his shipment through to final destination as an interstate shipment, or whether both reasons operated in causing it to take the position it did, are not matters of controlling importance. It is doubtless, fair and reasonably accurate to say that both the shippers and the carrier were actuated by self-interest, each side desiring that the transportation should be conducted in the way that would involve the least expense to that side—this much is the irresistible conclusion from the admissions of the pleadings and the agreed statement of facts contained in the record.

We are thus brought to a third general question:

Was the demand of the shippers that the foreign cars be used by plaintiff in error, justified by the law? or, conversely, Was the refusal of the plaintiff in error to use the foreign cars instead of its own sustained and upheld by law?

The answer to this latter question, which is, in fact, the ultimate question in the case, is dependent upon a number of underlying legal questions and principles which we will discuss briefly in their separate phases.

I.

THE PROPOSED SHIPMENT FROM DAVENPORT TO DESTINATION IN POLK COUNTY, IOWA, WAS AN INTRASTATE SHIPMENT.

An interstate shipment, on reaching the point specified in the original contract of transportation, ceases to be an interstate shipment and its further transportation to a point beyond destination within the same state on the order of the consignee, is controlled by the law of the state and not by the Interstate Commerce Act.

This was held in the case of *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas*, 204 U. S., 403, 412, where a carload of corn was shipped from Hudson, South Dakota, to Texarkana, Texas, at which point the contract of shipment ended and from which point it was subsequently shipped to Goldthwaite, Texas, upon a bill of lading which, upon its face, showed only local transportation.

The same plan was carefully followed with the shipments involved in the case at bar. It is, therefore, unnecessary to enter into an extended discussion of the application of *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas, supra.* Its application will undoubtedly be admitted by defendant in error, as to deny it would be inconsistent with its position in the *nisi prius* court, as shown by the record.

We have merely cited the foregoing case to forestall possible confusion as to whether that shipment should be a subject of state or federal regulation and to settle, in passing, that the proposed shipments from Davenport to destinations in Polk County, Iowa, would be in law and in fact, intrastate shipments.

The question of whether the plaintiff in error was obliged to use the foreign car instead of its own for this intrastate shipment, must, therefore, turn upon the common law or upon statutes of the State of Iowa, whichever may be applicable.

II.

AT COMMON LAW A CARRIER IS NOT COMPELLED TO USE FOREIGN EQUIPMENT DESIGNATED BY THE SHIPPER, BUT HAS THE RIGHT TO USE ITS OWN EQUIPMENT TO TRANSPORT PROPERTY OVER ITS OWN RAILS.

In the case of *Oregon Short Line and U. N. Ry. Co.* v. *N. P. R. R. Co.*, 51 Fed. Rep., 465, 472, Mr. Justice Field said:

> "As the receiving company is under no obligation to take the freight in the cars in which it is tendered, and transport it in such cars, when it has cars of its own, not in use, to transport it, there can be no custom that it shall pay the owner of such cars, should it receive them in such case, car mileage for their use. The car mileage in that case must be upon an arrangement between the parties. But when the receiving company take the freight in the foreign cars because it has none of its own out of use to transport it, or because it would injure the freight to transfer it to its own cars, it is the general practice for the receiving company to pay the usual mileage on the cars taken and used, and such practice is a reasonable one, and should be enforced."

In the case of *Little Rock & M. R. Co.* v. *St. Louis, S. W. Ry. Co.*, 63 Fed. Rep., 775, 779, this language was used:

> "The bills on file in the present case * * * fail to disclose whether the offending companies have refused to receive freight in the cars in which it was

> tendered to them, even when it would injure the freight to transfer it, or when they had no cars of their own that were immediately available to forward it to its destination * * * A necessary result of the doctrine contended for is that it deprives railway carriers in a great measure of the management and control of their own property by destroying their right to determine for themselves what contracts and traffic arrangements with connecting carriers are desirable and what are undesirable. There ought to be a clear authority found in the statute for depriving a carrier of this important right before the authority is exercised, for when questions of that nature have to be solved, a great variety of complex considerations will present themselves, some of which can neither be foreseen nor stated."

In *A., T. & S. F. Ry. Co.* v. *Denver & N. O. R. R. Co.*, 110 U. S., 667, 680, decided before the Act to Regulate Commerce was passed, this court said:

> "At common law, a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of statutory regulation to the contrary, determine for himself what agencies he will employ. * * * He puts himself in no worse position by extending his route with the help of others than he would occupy if the means of transportation employed were all his own. He certainly may select his own agencies and his own associates for doing his own work."

That Iowa has adopted the common law, is made clear by the opinion of the Iowa Supreme Court in *O'Ferrall* v. *Simplot*, 4 Clarke (Iowa), 381, 399, in which the following language was used:

> "The defendant * * * starts the query, whether the common law is the law of this state. This question has been suggested in this court before, but it has not been with apparent seriousness, and therefore it has received no formal answer; and it is not now pressed, with an appearance demanding more

than a suggestive reply. In the first place, according to our recollection of history, the common law was substituted for the civil by the Missouri territory, of which this state was once a part. In the next place, so many rights and titles—so great interests have grown up, as if by and under the common law, and not by and under the civil—that it would be the duty of a court to hold that the people brought it with them. The territory has from the beginning, including all private rights and titles, been administered upon the basis of the common law, and to hold that the civil, and not the common law, is the law of this state, would produce startling and revolutionary effects. The extent and magnitude of the interests involved, would require a court to hold to the common law, if there was no other reason.

But, besides this all our laws, back to the beginning of the territory, recognize—assume the common law. They would many of them, be unmeaning, senseless, without it. All proceedings of the courts would be so, and not a judgment heretofore recovered would be valid, nor a title under it. But the ordinance of 1787, for the government of the Northwest Territory, made it the law of that country; and that was extended over Wisconsin, and then the laws of Wisconsin, over Iowa. And although the statutes of Michigan and Wisconsin were repealed in 1840, the ordinance of 1787 was not affected but remained in full vigor as before."

At this point we would call attention to the fact that as to the coal shipments in the case at bar, plaintiff in error was ready, willing and able to furnish cars of its own for the transportation service, and, of course, it would not have damaged a commodity like coal to transfer it from one car into another. It appears (Transcript of Record, 14) that the plaintiff in error was willing to

"furnish cars for shipment of coal from Davenport to any point in Iowa,"

and

> "its readiness and ability to furnish cars of its own for shipment is not controverted and will, therefore, be taken to be true." (Rec., 14.)

It being admitted in this case that the plaintiff in error could have furnished its own cars and it being obvious that it would not damage the cargo to transfer it, it is clear that under the common law the plaintiff in error had the right to insist upon using its own cars instead of renting cars which the shippers designated. This brings us to the inquiry: Is the common law abrogated by statutes of the State of Iowa that are applicable to the proposed intrastate shipments?

III.

THERE IS NO STATUTE IN THE STATE OF IOWA THAT COMPELS THE INITIAL CARRIER TO RECEIVE A SHIPMENT IN A FOREIGN CAR AND THE STATUTE OF THAT STATE REQUIRING A CONNECTING CARRIER, ACTING AS SUCH, TO RECEIVE SHIPMENTS COMING TO IT OVER OTHER LINES IN FOREIGN CARS, DOES NOT APPLY TO THE CASE AT BAR FOR THE REASON THAT PLAINTIFF IN ERROR WAS THE INITIAL CARRIER AND NOT A CONNECTING CARRIER.

The status of the initial carrier is essentially different, under the Iowa statutes, from that of a connecting carrier in so far as receiving shipments in foreign equipment is concerned.

Only two sections of the Code of Iowa in force at the time that the shipments in question were tendered and refused, have a direct bearing on the furnishing of cars

by the carrier for use of the shipper. The first, is Section 2116, which reads as follows:

> "Every railway corporation shall when within its power to do so, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight, and receive and transport such freight with all reasonable dispatch, and provide and keep suitable facilities for the receiving and handling thereof at any depot on the line of its road; and shall also receive and transport in like manner the empty or loaded cars furnished by any connecting road, to be delivered at any station or stations on the line of its road, to be loaded or discharged or reloaded and returned to the road so connecting; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a similar service."

This section, it will be noted, deals with two separate propositions, namely:

First. The furnishing of cars as an initial carrier to the shipper.

Second. The hauling of the cars of a connecting carrier over its line from point of connection to destination and back again to point of connection.

With the first requirement of this section the plaintiff in error was ready, willing and desirous to comply. It had the cars and offered them to the shippers who refused them.

As to the second requirement of this section, namely: the receiving of cars from the connecting line, we insist it has no application to the facts in the case at bar, for the Rock Island Line or the Burlington Line, which had previously hauled these carloads of coal, interstate, cannot be considered a connecting line under the case in

204 U. S. 403, cited above. If either could be considered a connecting line, it would be only on the theory of the movement being an interstate movement from the point of origin in Illinois to point of ultimate destination in Polk County, Iowa. This would entail the interstate tariff rate and an interstate billing which would have been satisfactory to the plaintiff in error and if such billing had been used and such rate had been applied, this litigation would never have arisen. Suffice it to say that the shippers had carefully planned the termination of the interstate shipment so as to bring the transportation from Davenport to destination in Polk County, Iowa, within the field of intrastate commerce and under the regulation of the Iowa Commission and subject to the Iowa distance tariff. Thus, neither by intent of the shippers nor by the facts in the case, can the preceding carrier be regarded as a connecting carrier as to the shipments under consideration.

The remaining section which deals with this subject, is Section 2153 of the Supplement Code of Iowa, 1907, the material parts of which are as follows:

> Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars, if in carload lots * * * and it shall be the duty upon request of any such owner or consignor of freight, made to the initial company, of such railway companies whose lines so connect, to transport the freight without change of car or cars if the shipment be in a carload lot or lots."

That this section compels the interchange of cars only

at point of connection between two connecting carriers, is so obvious as to make discussion thereof superfluous. In the case at bar it was contemplated moving these shipments from Davenport to points of destination in Polk County, Iowa, not over the lines of two connecting carriers but over the one line of the plaintiff in error which served alike Davenport, the point of origin, and the various points of destination in Polk County, Iowa. Under such facts clearly Section 2153 has no bearing.

Inasmuch as there is no statute in abrogation of the common law which is applicable to the facts involved in this record, it follows, as a matter of course, that the common law applies, an inevitable corollary of which is that plaintiff in error was justified in insisting upon its common law right to furnish its own cars for transporting the shipments moving wholly on its own line.

IV.

THE ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF IOWA WAS VOID AB INITIO BECAUSE ITS ENFORCEMENT WOULD DEPRIVE PLAINTIFF IN ERROR OF ITS CONSTITUTIONAL RIGHT TO CONTRACT, SECURED BY THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION.

By its order, the Commission imposed upon the plaintiff in error the obligation to contract for the use of or pay for the use of cars of foreign carriers bringing coal to Davenport. It was not allowed freedom to contract in the open market for such cars where most advantageous contract rates could be secured, nor was it allowed to use its own cars. The denial of the right of freedom to contract has been held to be in contravention of

the Fourteenth Amendment of the Federal Constitution by this court in the case of *Allgeyer* v. *Louisiana*, 165 U. S., 578, 588, wherein it was said:

> "It is natural that the state court should have remarked that there is in this 'statute an apparent interference with the liberty of defendants in restricting their rights to place insurance on property of their own whenever and in what company they desired.' Such interference is not only apparent but it is real, and we do not think that it is justified for the purpose of upholding what the state says is its policy with regard to foreign insurance companies which had not complied with the laws of the state. * * * We think the statute is a violation of the Fourteenth Amendment of the Federal Constitution in that it deprives the defendants of their liberty without due process of law. The statute which forbids such act does not become due process of law, because it is inconsistent with the provisions of the Constitution of the Union. The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose *to enter into all contracts* which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

We do not understand that the Commission of the State of Iowa acted under any specific statute which can here be pointed out as the unconstitutional statute by which the assumed authority for its action was given. However, the Railroad Commissioners of the State of Iowa have no power except such as is given them by

statute, and any power that they assume to exercise is valid only in so far as it is founded on legislative authority. Any act of the Commission can be no greater than an act of the legislature. The order of the Commission in this case, we contend, was in contravention of the Fourteenth Amendment and was also without statutory authority from the state, or, if founded upon statute authority, the order presents an unconstitutional phase of the statute from which such alleged authority springs.

In the case of *Central Stock Yards* v. *Louisville & Nashville Ry. Co.*, 192 U. S., 568, 571, the court said:

> "Courts have no authority to dictate a contract to the defendant or to require it to make one."

See, also

Atchison, Topeka & Santa Fe Ry. Co. v. *Denver & N. O. R. R. Co.*, 110 U. S., 667, 680.

V.

THE ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF IOWA IS VOID BECAUSE ITS ENFORCEMENT WOULD ENTAIL THE TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW, IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION.

This order and the judgments of the Iowa District and Supreme Courts, in sustaining it, in effect decree that the Chicago, Milwaukee & St. Paul Railway Company shall be deprived of the use of its own cars in the transportation of the coal in question and further decree that the cars of the Rock Island or Burlington Line shall be impressed into the service to the exclusion of the cars

of the Chicago, Milwaukee & St. Paul Railway Company.

To deprive a person of the lawful use of his property is in effect to deprive him of the property. The Iowa court (Transcript of Record, 16), recognized that "a slight compensation is charged for the use of the cars."

The use of the word "slight" unjustifiably belittles the facts. Yet we deem it unimportant whether it is slight or large, for in either event it is the money of the plaintiff in error that is in effect taken away from it without due process of law. There is no law regulating what carriers may charge each other for the use of their cars. That is a matter of private contract and in the absence of contract, the courts would undoubtedly hold that the compensation would be based upon the *quantum meruit*. Assuming that the charge would be no more than from thirty to thirty-five cents per car per day, as instanced in the case of *Missouri & Illinois Coal Company* v. *I. C. R. R. Co.*, 22 I. C. C. 39, quoted *supra*, and assuming that each car consumed on an average only six days in making the round trip, there is thus involved a substantial outlay on an individual car movement, and when the individual car movements run into the thousands, in the course of a year, the dollars and cents aspect of the question here under consideration becomes very substantial.

It should be borne in mind also that if the Board of Railroad Commissioners of the State of Iowa may compel the use of foreign cars for coal, they may do the same for corn, wheat, cattle, hogs and every other commodity that moves in carlots in the state. Clearly, the principle here involved is not a narrow but a far reaching one.

In *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S., 403, 417, the court said:

> "The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States."

See, also, *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589.

Another aspect of this question arises from the fact that the observance of the order of the Board of Railroad Commissioners of Iowa would entail the confiscation or "snatching" by the Chicago, Milwaukee & St. Paul Railway Company at Davenport of the cars of the Rock Island and Burlington Lines when they arrive in that city with their interstate cargoes of coal. In the case of *Central Stock Yards* v. *L. & N. Ry. Co.*, 192 U. S., 568, 571, this language is used:

> "What we have said applies, in our opinion, to the Constitution of Kentucky with little additional argument. * * * It cannot be intended to sanction the snatching of the freight from the transporting company at the moment and for the purpose of delivery. It seems to us that this would be so unreasonable an interpretation of the section that we do not find it to consider whether under any interpretation it can be sustained. In view of the course taken by the argument we may add that we do not find a requriment that the railroad company shall deliver its own cars to another road."

Considering the order from the standpoint of the Rock Island and Burlington Lines, it would, in times of car shortage, deprive them of the use of their cars intended to move freight originating on their own lines and they might be very unwilling at such times to contract away or lease the use of their cars. Yet at such times the en-

forcement of the order would either compel them to make such contracts or subject them to the deprivation of the use of their cars at least.

It should be noted in this connection that neither the Chicago, Rock Island & Pacific Ry. Co. nor the Chicago, Burlington & Quincy R. R. Co. was made a party to the proceedings before the Board of Railroad Commissioners of the State of Iowa in which this order was entered. They did not have their day in court or their opportunity to be heard. Yet the order, in some of its phases at least, imposes hardships on those lines which clearly they would not have consented to and would have opposed if they had been heard.

Foreclosing the rights of necessary parties in interest without making them parties to the proceeding, is commented on by this court in the recent decision of *L. & N. R. R. Co.* v. *Green Garrett et al.*, No. 23 of the October Term, 1913, decided December 1, 1913, not yet officially reported, which decision cites *L. & N. R. R. Co.* v. *Siler*, 186 Fed., 176.

VI.

THE ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF IOWA, IF ENFORCED, WOULD DENY TO THE PLAINTIFF IN ERROR THE EQUAL PROTECTION OF THE LAWS, CONTRARY TO THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

It is conceded that where the exercise of the police power of the state is concerned and possibly also in some cases where a general public necessity is involved, the common law rights of railroads in conflict therewith may be lawfully restricted by statute.

However, in the case at bar it is a matter of no consequence to the general public nor to the shippers of Iowa whether this coal be loaded in a car belonging to the Chicago, Rock Island & Pacific Railway Company or one belonging to the Chicago, Milwaukee & St. Paul Railway Company, nor can it be said that the police power of the state is concerned with the question of whether the coal car shall bear the name of one carrier or the other or be subject to the ownership of the one or the other. We must keep in mind that it is an initial movement that is here involved so far as the intrastate shipment is concerned and that under the facts contained in the record, the cars of one carrier would perform the service as satisfactorily as those of the other. Under these conditions there is no ground on which the state can differentiate between the property rights here involved of the plaintiff in error and those of other corporations or persons of the state who are permitted by its laws to furnish their own facilities for the conduct of their own business while the plaintiff in error is denied that same right in respect of aspects of its business in which the general public has no material interest and the police power of the state is not concerned.

In the case of *Lake Shore & Michigan Southern Ry. Co.* v. *Smith*, 173 U. S., 684, 698, the Supreme Court used the following language:

> "In this case * * * there is not the exercise of the acknowledged power to legislate so as to prevent extortion or unreasonable or illegal exactions. The fixing of the maximum rates does that. It is a pure, bald and unmixed power of discrimination in favor of a few of the persons having occasion to travel on the road and permitting them to do so at a less expense than others, provided they buy a certain number of tickets at one time. It is not legislation for

the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the persons spoken of, who in the legislative judgment should be carried at a less expense than the other members of the community. There is no reasonable ground upon which the legislation can be rested unless the simple decision of the legislature should be held to constitute such reason. * * * In holding this legislation a violation of that part of the Constitution of the United States which forbids the taking of property without due process of law, and requires *the equal protection of the laws*, we are not, as we have stated, thereby interfering with the power of the legislature over railroads as corporations or common carriers, to so legislate as to fix maximum rates to prevent extortion or undue charges, and to promote the safety, health, convenience or proper protection of the public. We say this particular piece of legislation does not partake of the character of legislation fairly or reasonably necessary to attain any of those objects, and that it does violate the Federal Constitution as above stated."

VII.

THE ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF IOWA IS VOID BECAUSE ITS ENFORCEMENT WOULD INTERFERE WITH AND BURDEN INTERSTATE COMMERCE THROUGH INTERFERRING WITH AND BURDENING THE INSTRUMENTS OF INTERSTATE COMMERCE.

It is conceded in the stipulated statement of facts (Transcript of Record, 14), that the cars in question were brought by the Rock Island and Burlington Lines from point of origin in Illinois to Davenport, Iowa, with the respective coal shipments in question loaded therein. Thus the vehicles of interstate commerce made up the identical cars to which the order of the Board of Rail-

road Commissioners of the State of Iowa was intended to apply and does apply.

While the interstate carriers had performed, consummated and terminated their parts of the contract of carriage, the shippers had not wholly performed the obligations resting upon them and arising from the same contracts of carriage. That is to say, the shippers had not, as they were in duty bound to do, unloaded their coal and released the vehicles of interstate commerce to the interstate carriers for their further use as interstate carriers. On the contrary, the shippers, instead of so releasing the interstate cars when the interstate haul had been completed, sought to impress those cars into the service of the intrastate carrier to be used in intrastate commerce. When the intrastate carrier refused to be a party to the snatching of interstate carrier's cars, the shippers invoked the aid of the Board of Railroad Commissioners of the State of Iowa and the order in question resulted.

Let us assume an extreme state of facts for the purpose of illustrating the possible effects of the order in the case here under discussion. We will say that a car of the Rock Island, loaded with coal, is, under the order of the Iowa Commission, appropriated by the Milwaukee road under the direction of a shipper, having places of business at both Davenport and Des Moines, to carry the carload of coal from Davenport, Iowa, to Des Moines, a city in Polk County, Iowa; that when it arrives at Des Moines, the shipper will unload the coal and load in its place fuel wood, billing the same back to Davenport. At Davenport the fuel wood will be unloaded and the car reloaded again with coal to be forwarded

to Des Moines, and when the second carload of coal in the same car gets to Des Moines, it will be unloaded and a second carload of wood placed in the car and forwarded to Davenport, and this process continued *ad infinitum*, or until the car is worn out. In the extreme and improbable case which this illustration presents, the interstate vehicle would be taken forever from interstate service and placed for all time in intrastate commerce. If this could be done on one car, it could be done on all interstate cars that come into Iowa. Iowa would then probably never suffer from car shortage, but the neighboring states and interstate commerce would suffer from car shortage that otherwise would not have been felt. It would not be denied that such a state of facts would entail a serious burden on interstate commerce which would be traceable entirely to the burdening of or the interference with the vehicle of interstate commerce. Coal cars are vehicles of interstate commerce. In the case of *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S., 452, 474, the court said:

> "It may not be doubted that the equipment of a railroad company engaged in interstate commerce, included in which are its coal cars, are instruments of such commerce. From this it necessarily follows that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equal distribution and the prevention of an unjust and discriminatory one."

See, also,

Southern Railway Company v. *United States*, 222 U. S., 20, 26.

Northern Pacific Ry. Co. v. *State of Washington*, 222 U. S., 370, 377.

Inasmuch as the Congress of the United States has extended governmental regulations to include the use and distribution of coal cars in interstate commerce, state regulation of such interstate vehicles is thereby excluded.

Minnesota Rate Cases, 230 U. S., 352, 400.
Smith v. *Alabama*, 124 U. S., 465.
McCulloch v. *Maryland*, 4 Wheat., 415.

Since, under the actual operation of the order of the Board of Railroad Commissioners of Iowa, the interstate vehicle is to be seized, taken out of its interstate channels and impressed in an intrastate service, the principle involved is not different from that of the hypothetical illustration given above. It is merely operative in a lesser degree, but in a degree sufficient, however, to be a burden on interstate commerce, which is repugnant to the Federal Act to Regulate Commerce and in direct conflict with the reasoning of the opinion of the Supreme Court of the United States, last quoted from above.

Wherefore, plaintiff in error prays that the judgment and decision of the Supreme Court of the State of Iowa be in all things reversed, annulled and altogether held for naught, and that plaintiff in error be restored to all things which it has lost thereby, as well as by the said judgment and decision of the District Court of Polk County, Iowa, and for such other relief in the premises as may be just and proper.

Respectfully submitted,

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Burton Hanson,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1913.

No. 176

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,

Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

O. W. DYNES,
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Attorneys.

BURTON HANSON,
Of Counsel.

BURTHORP-WARREN PRINTING COMPANY, CHICAGO.

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MAY IT PLEASE THE COURT:

A short reply to the brief filed on behalf of defendant in error is deemed advisable for the purpose of discussing the importance of certain statements and admissions made by opposing counsel and for the purpose of discussing the bearing upon this case of the very recent opinion by this court in *Atchison, Topeka & Santa Fe Railway Company et al.* v. *The United States et al.*, Case No. 590, October Term, 1913, decided January 26, 1914, and not yet officially reported.

I.

Mr. Justice Lamar, in case No. 590, October Term, 1913, *Atchison, Topeka & Santa Fe Railway Company et al.*, v. *The United States et al.*, decided January 26, 1914, used in his opinion the following language:

> "Whatever transportation service or facility the law requires the carrier to supply they have the right to furnish. They can therefore use their own cars, and cannot be compelled to accept those tendered by the shipper on condition that a lower rate be charged."

The opinion quoted from above has been rendered since we filed our original brief for plaintiff in error. The language quoted concisely states the law to be what we are contending. It is an opinion dealing with conditions involving that border line where a carrier's duty meets and mingles with the concurrent duty of the carload shipper. It deals with a state of facts not nearly so definite as those involved in the case at bar in respect of the rights and duties of the carrier. That case had to do with the cooling and refrigeration of perishable shipments, a part of which cooling was necessary while the shipment was still in the possession of the consignor and before it was surrendered by the consignor to the carrier. After it was surrendered to the carrier, the same condition obtained in a somewhat more complicated way, namely, the condition necessitating the cooling or continuous keeping cool of the shipment during transit. The controversy had to do with the question of where the consignor's obligations should end and the carrier's obligations, as a carrier, should begin.

In the case at bar there is no vagueness in this regard.

Under the common law, under the statutes of the State of Iowa and under the Federal Act to Regulate Commerce the duty to furnish cars rests upon the carrier and not upon the consignor of a carload shipment. Section 2116 of the Code of Iowa, set forth on page nine of our original brief, provides that:

> "Every railway corporation shall, when within its power to do so, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight."

Under the foregoing, it is obvious that the carrier must go to the expense of building and maintaining as many cars as may be necessary for handling its business, and when carriers have done so they may rightfully claim the privilege to "use their own cars, and cannot be compelled to accept those tendered by the shipper." That this privilege logically follows as a corollary to the duty of furnishing the cars, is well supported by the language of the Interstate Commerce Commission in 20 I. C. C., 120, quoted by Mr. Justice Lamar in his opinion above cited, as follows:

> "The shipper has no right to provide refrigeration himself today and call upon the railroad company for that service tomorrow. To permit such a course is to demoralize the service of the defendants and to prevent them from discharging their duty with economy and efficiency. * * * It is the duty of the carrier to furnish refrigeration upon reasonable demand and in so far as the furnishing of that refrigeration is a part of the service rendered by the carrier, the carrier may insist upon its right to furnish that service exclusively."

We submit the shipper in the case at bar had no right

to provide the freight cars when it wished to and call on the carrier to do so at other times.

The court's opinion also contains the following further pertinent observation:

> "Neither party has a right to insist upon a wasteful or expensive service for which the consumer must ultimately pay. The interest of the public is to be considered as well as that of shippers and carriers."

It would entail unconscionable waste if a carrier, obliged by law to maintain sufficient cars to take care of all business originating on its line, could, at the caprice of shippers, be obliged to keep its own cars out of the service and idle and use in their stead cars designated by the shipper, paying therefor whatever car rental might reasonably be exacted by the owner of such borrowed equipment.

In the case at bar the tariffs of the carrier were not made and published on the theory that the carrier would be subjected to such an unlawful requirement, but on the theory that the carrier might lawfully economize through reaping the benefit of using the cars it constructs and maintains.

II.

If the shipments in question were interstate shipments, this case has been taken to the wrong Commission. It should have gone to the Interstate Commerce Commission instead of to the Iowa Commission. The Iowa Commission has no jurisdiction in or power of regulation over interstate shipments.

In our original brief we treated the shipments involved

as intrastate shipments within the rule laid down in the case of *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas*, 204 U. S., 403. The learned counsel for the State of Iowa, in their brief now on file in this case, appear to argue in effect that the shipments were actually interstate, (see pages 13, 14 and 18 of their brief), while on page five of their brief they expressly agree with our original position that the shipments were intrastate shipments. This apparent contradiction deserves consideration, for while the same conclusion will be reached irrespective of whether the shipment is state, or interstate, a different reason will support the conclusion.

On page thirteen of their brief, counsel say:

> "The record shows that there are a number of jobbers and wholesalers dealing in coal at Davenport, Iowa, who receive coal from points in Illinois and *reconsign* the same at Davenport."

The use of the word "reconsign" seems to indicate that the shipment was never intended to end at Davenport, but that it was intended, on the contrary, that the same shipment should continue on to another consignee. This, with other matters to be referred to presently, appears to argue rather conclusively that the transportation contemplated by the shipper within the State of Iowa was to be a part of the transportation intended when the shipment was first loaded in Illinois. The intention of the shipper is of grave importance in determining whether a shipment is to be treated as interstate or intrastate. On page 14 of their brief, this language is used:

> "We trust that it is not improper in replying to counsel's statement as to why coal is not transported directly from the initial points in Illinois to points of destination in Iowa, to suggest that there is now no joint tariff over the lines of the Chicago, Bur-

> lington & Quincy and the Chicago, Rock Island & Pacific Railway Companies from mining stations in Illinois to local stations in Iowa over the Milwaukee Railway Company, except a joint tariff effective October 9, 1913, from Peoria, Ill., via Chicago, Rock Island & Pacific Railway to Depue, Ill. * * * but even if the Railway Company should hereafter promulgate joint tariffs from mining stations in Illinois to points in Iowa over the line of the Milwaukee Railway Company, it would still only be a partial relief because only a part of the coal is sold at the time the car starts on its initial shipment in Illinois."

From what is quoted above, the conclusion seems inevitable that the shippers here involved intended an interstate shipment in each instance from the point of origin to an ultimate destination; that the joint through rates were not sufficient or satisfactory and that satisfactory reconsigning privileges were not accorded in the published tariffs of the companies. The language quoted above plainly states that if sufficiently liberal reconsigning privileges were accorded by the carriers to govern shipments from point of origin to ultimate destinations in Iowa, this litigation would never have arisen. The quoted language further indicates that the shippers have merely sought to cover up their intent to make interstate shipments by the method of billing and rebilling resorted to.

In the case of *Louisiana Railroad Commission* v. *Texas Pacific Railway Company*, 229 U. S., 336, 341, this language is used:

> "The principle enunciated in the cases was that it is the essential character of the commerce, not the accident of local or through bills of lading, which determines Federal or State control of it. And it

takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country. The facts of the case at bar bring it within the ruling. The staves and logs were *intended* by the shippers to be exported to foreign countries and there was no interruption of their transportation to their destination except what was necessary for transshipment at New Orleans."

We have italicized the word "intended."

In the case of *Texas & New Orleans R. R.* v. *Sabine Tram Company*, 227 U. S., 111, 130, the court, in deciding against a contention that the shipment was intrastate, said:

> "The shipment was not an isolated one but typical of many others which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber and in the year 1906, to 39,554,000 feet. Nor was there a break, in the sense of the interstate commerce law and the cited cases, in the continuity of the transportation of the lumber to foreign countries by the delay and its transshipment at Sabine. *Swift and Company* v. *U. S.*, 196 U. S., 375. Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments."

In the case at bar these shipments were not isolated shipments but a part of a general plan. In the case at bar there was no definite ultimate destination named when the shipments started to move just as in the case last cited there was no foreign destination given. In the case at bar it can scarcely be said that there was any break in the movement. The shipper even contended, and counsel now contend, that the shipments should not be taken from the car at Davenport before starting them for ultimate destinations.

See, also,

Southern Pacific Terminal Co. v. *Interstate Commerce Commission,* 219 U. S., 498, and
Railroad Commission of Ohio v. *Worthington,* 225 U. S., 101.

The opinion in the case of *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas, supra,* has been narrowed in its application by the later cases cited above, so that in view of the admission now made of record by counsel for the State of Iowa, it is very doubtful whether this case falls within the law of *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas.* If it does not fall within the law of that case, it must then necessarily be governed by the later cases last cited above. That is, it must be construed as a case presenting a question of interstate commerce which can only be taken to the Interstate Commerce Commission and which in this particular case was improperly presented to the Railroad Commission of Iowa, which, acting without jurisdiction, on a matter of interstate commerce, has entered an order that must necessarily be held void.

III.

Counsel say, page 18 of their brief:

> "The order of the railway commission of Iowa is in aid of interstate commerce because it tends to a more prompt releasing of cars. Time is lost in the unnecessary unloading and reloading of cars at Davenport, Iowa."

Here, again, counsel appear to take the position that the commerce involved was interstate, and that the State of Iowa had a right to regulate same, provided helpful regulation only was resorted to.

We will not re-argue this feature, but we desire to call the court's attention in this connection to the opinion by Chief Justice White in *St. Louis, Southwestern Ry. Co.* v. *State of Arkansas*, 217 U. S., 136, holding that the regulation of interstate carriers in respect of furnishing freight cars rests with the Interstate Commerce Commission, and holding that a State Statute which compels a railroad to distribute cars for shippers in a manner that affects its interstate business, imposes a burden on interstate commerce and is, for that reason, unconstitutional.

IV.

Counsel for the State of Iowa have contended that the decisions of this court in *Wisconsin* v. *Jacobson*, 179 U. S., 287, and *Grand Trunk Ry. Co.* v. *Michigan Railway Commission*, 231 U. S., 457, are precedents to govern this court in considering the question of whether the order of the Iowa Commission has the effect of taking property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution.

An examination of the above cases will show that in so far as it had a bearing on the case at bar, each case turned on the principle of a general public necessity for the service demanded.

In the case at bar there is a general public necessity to be met by supplying freight cars, but that public necessity is sufficiently met on the part of a given carrier by supplying a sufficient number of cars from its own stock of freight car equipment to properly handle the business. The law does not recognize a capricious public necessity

which goes beyond requiring that freight cars be supplied and that goes to the extent of demanding that particular cars designated by the shipper and none other shall be supplied.

In *Oregon R. R. & N. Co.* v. *Fairchild*, 224 U. S., at page 529 *et seq.*, this court limits the application of the principle laid down in *Wisconsin* v. *Jacobson, supra*, and emphasizes the importance of the element of the general public *necessity* for the service demanded and the element of the carrier's legal obligation to afford or furnish the service demanded.

While there is, of course, a general public necessity for freight cars, it is not a necessity that differentiates as to ownership of the car. When the cars are supplied by the carrier, suitable for the traffic, public necessity is satisfied. There is no remaining public necessity that warrants an interference with the carrier's right to supply the cars.

Under the Act to Regulate Commerce, the carrier is obliged to "make reasonable rules and regulations with respect to the exchange, interchange and return of cars." This obligation does not depend upon the circumstance of a through rate, alluded to in opposing counsel's brief, but extends as well to any through route over which an interstate shipment moves even though under a combination of local rates published and on file with the Commission. If the actual object of the shippers here involved was not to get a lower rate than the lawful rate that their competitors were paying on interstate shipments, it was only necessary to have those shipments treated as interstate shipments and paid for on that basis in order to avail themselves of the benefits of the Act to Regulate

Commerce, among which is the right to have the car in which the commodity is originally loaded passed to a connecting carrier and on to ultimate destination. However, in the case here presented there was no connecting carrier. To argue otherwise is to confess that the movement involved was the continuation of an interstate movement from which it would inevitably follow that the dispute was taken to the wrong Commission when being taken to the Iowa Commission instead of to the Interstate Commerce Commission. This would, of course, mean the order of the Iowa Commission is void for lack of jurisdiction.

Respectfully submitted,

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C. S. JEFFERSON,
Attorneys for Plaintiff in Error.

BURTON HANSON,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1913.

No. 176

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

APPELLEE'S BRIEF

GEORGE COSSON, *Attorney General,*
For Appellee.

HENRY E. SAMPSON,
Of Counsel.

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APPELLEE'S BRIEF.

The question presented is: Can the Milwaukee Railway Company, a common carrier of freight and passengers, arbitrarily and for its private advantage, require wholesalers and jobbers in soft coal located at Davenport, Iowa, to unload the coal which comes into Davenport from mines in Illinois in foreign equipment and reload the same in the equipment of the Milwaukee Railway Company as a condition precedent to its moving in intrastate commerce over the Milwaukee Railway from Davenport Iowa, to some point in Iowa on the line of the Milwaukee Railway at which the jobber happens to make sale of said coal?

STATEMENT OF THE CASE.

Defendant in error finds it necessary to restate the case because the statement made by plaintiff in error does not contain all of the elements necessary to a complete understanding of the question involved.

There are a number of shippers at Davenport, Iowa, who are jobbers and wholesalers in soft coal and either have mines located in the state of Illinois or purchase from such mines, and necessarily the original shipment of said coal is interstate and transported to Davenport, Iowa, over the Chicago, Burlington & Quincy Railroad or Chicago, Rock Island & Pacific from points in Illinois to Davenport, Iowa. These interstate shipments of coal in carload lots upon arrival at Davenport are placed on house or local side tracks. When the coal companies make sale or receive orders for said coal at stations on the Milwaukee Railway, the shipper goes to the office of the initial carrier, pays the freight charges and directs the initial carrier to place the car on the interchange track, there being a connecting track at Davenport, Iowa, for the transfer of cars from or to the C., B. & Q., the C., R. I. &. P., and the C., M. & St. P. Ry. Company. The shipper then goes to the Milwaukee agent, asks for a bill of lading to a station on the line of railway of the Milwaukee under the regular Iowa distance tariff and the Milwaukee agent is advised that the car of coal is on the interchange track.

While the coal is to start on a new, purely intrastate journey, it is in the same car in which it was loaded at the mines in the state of Illinois and transported to Davenport in some foreign equipment but on the line of the C., B. & Q. or the C., R. I. & P. Ry. Co.; that for a number of years the Milwaukee road accepted said coal in for-

eign equipment on the interchange track at Davenport without controversy; that some time in 1909 the Milwaukee railway company issued an order refusing to accept written billing and receive cars loaded with coal from the various coal companies operating at Davenport, unless the same was unloaded and reloaded in the Milwaukee equipment. (Record pages 1 to 3; 7 to 10.) See Record page 14 for finding of facts by the board of railroad commissioners of Iowa, and Record pages 27 to 28 for finding of facts by the Supreme Court of Iowa, and the case of *State vs. Chicago, Milwaukee & St. Paul*, 152 Iowa, 317, at 318.

Upon refusal of the Milwaukee to accept cars, complaint was made to the Board of Railroad Commissioners of Iowa, and upon hearing, the Milwaukee being represented by its commerce counsel and counsel for Iowa, it was ordered that the Milwaukee company accept the coal upon the interchange track for local points on the line of the Milwaukee railway in the equipment in which it was then loaded and in which it had been transported from the mines upon proper billing being furnished in accordance with the rules of said company.

It was urged before the commission (first) that the shipment in question was an interstate shipment; (second) that the commission had no authority to make the order in question.

The commission found that they had authority under the statutes of Iowa to make the order and that the shipment from Davenport to a point in Iowa was an intrastate shipment, although it was admitted by all parties that the original shipment was clearly an interstate shipment. (Opinion of the Railroad Commission of Iowa, Record, pages 14 to 26 inclusive.)

The commission found "as a matter of fact, in these days, all freight cars are in effect, pooled. In the actual

operation of railroads generally, no distinction of ownership is made in the handling of cars. Modern conditions, in this respect, have been recognized by the railroads themselves in the establishment of car service bureaus. A slight compensation is charged for the use of cars for accounting and other purposes but this is not inconsistent with the theory that in actual operation, all freight cars are pooled. * * * It is within common knowledge that to unload and reload Iowa coal causes great injury to the coal itself, as well as the burden of expense in the transfer. If such a right existed and was exercised by the railroads of Iowa, the injury to the coal interests of this state would be incalculable. * * * It would be a monstrous doctrine and an incalculable burden upon the shippers of this state if it were for a moment conceded that any railroad operating in Iowa could require cars to be unloaded and reloaded into its own equipment before it would transport them. * * * We believe that the statute is a complete answer to the question and that it is founded upon the inherent necessities of the shipping public." (Record, page 16.)

Upon appeal to the Supreme Court of the State of Iowa the Milwaukee Railway Company contended that the shipment in question was an interstate shipment and that the statutes did not authorize the commission to make the orders. The supreme court of the state held adversely to the contention of the company on both of the above propositions and held that "it certainly would be a great inconvenience to the public to be compelled to unload and reload in the defendant's equipment every car of coal that the dealer might wish to send out over the defendant's road simply because the coal was received by him in cars belonging to a private person or to another road." (Record, pages 27 to 31, at page 30; *State vs. Chicago, Milwaukee Railway Co.*, 152 Iowa, 317, at 321.)

ARGUMENT.

I.

Appellant in Division I of the argument urges that the proposed shipment from Davenport to destination to a point in Iowa on the Milwaukee railway is an intrastate shipment, and cites the case of *Gulf Colorado & Santa Fe Ry. Co. vs. Texas*, 204 U. S., 403, 412.

The state not only admits the proposition but urges the soundness of the same, and in the court below and before the railway commission, the main contention of the railway company was that the shipment in question was not a state but interstate shipment.

State vs. Chicago, Milwaukee & St. Paul Ry. Co.,
152 Iowa, 317, at 319;
Record, 9-14; 21-30.

II.

In Division II, it is urged that at common law a railway company was not bound to transport property in the equipment designated by the shipper.

The soundness of this proposition may readily be admitted, but in view of the point raised in Division III, it also becomes entirely immaterial.

It is urged in Division III of the argument (page 22) that there is no statute in the state of Iowa which compels a railway company to receive a shipment in a foreign car.

III.

Did the Board of Railroad Commissioners of Iowa have authority under the statutes of Iowa to make the order requiring the Milwaukee Railway Company to re-

ceive coal on the interchange track at Davenport, Iowa, in the equipment in which the coal was then loaded, and to prohibit the Milwaukee Railway Company from requiring the coal companies at Davenport to unload the coal and reload the same in Milwaukee equipment as a condition precedent to its moving in intrastate commerce over the lines of the Milwaukee Railroad Company in Iowa?

It becomes unnecessary to originally argue this proposition in view of the finding and the decision of the Supreme Court of Iowa.

The question was raised both before the Board of Railroad Commissioners of Iowa and the Iowa Supreme Court. The commission found as a matter of fact that it had full authority under the statute to make the order in question. (See Record pages 15 and 16, par. 28-29.)

The Supreme Court of Iowa found it unnecessary to determine whether complete authority was granted in section 2116 of the Code of Iowa in view of section 2112 of the Code which provides that the Board of Railroad Commissioners of Iowa "shall have general supervision of all railroads in this state operated by steam;" and section 2113 of the Code which provides that when in the judgment of the board changes in the mode of operating the road or conducting its business "is reasonable and expedient in order to promote * * * the convenience and accommodation of the public, the board shall serve notice upon such corporation of the changes which it finds to be proper" and held in effect that the order in question was reasonable and that it was in harmony with section 2113 of the Code, because "it certainly would be a great inconvenience to the public to be compelled to unload and reload in the defendant's equipment every car of coal that the dealer might wish to send out over the defendant's road simply because the coal was received by him in cars belonging to a private person or to another road."

And in further support of its position the court directed attention to section 2153, Supplement to the Code of Iowa, 1907, which provides:

> "Every owner or consignor of freight to be transported by railway from any point within this state to any other point within this state shall have the right to require that the same shall be transported over two or more connecting lines of railway, to be transferred at the connecting point or points without change of car or cars, if in carload lots, * * * and it shall be the duty, upon request of any such owner or consignor of freight, * * * to transport the freight without change of car or cars, if the shipment be in carload lot or lots."

State vs. Chicago, Milwaukee Ry. Co., 152 Ia,, 317.

It is so elementary that this court accepts as conclusive the interpretation placed upon a state statute by its highest judicial tribunal that citation is unnecessary, but see the case of *Louisville & Nashville vs. Kentucky*, 183 U. S., 503, where the court said: "This court must accept the meaning of the state enactments to be that found in them by the state courts." (Page 508.)

IV. AND V.

Does the order of the Board of Railroad Commissioners of Iowa deny plaintiff due process in that (a) it amounts to taking plaintiff's property; or (b) denies him the right of the liberty of contract?

In Division IV of appellant's argument it is urged that the order in question deprives the railway company of its right to contract, and hence offends against the Fourteenth Amendment.

In Division V it is urged that the order of the board of railroad commissioners amounts to a taking of the railway company's property in contravention of the Fourteenth Amendment.

Both Divisions IV and V of appellant's argument will be treated together because in each instance appellant

relies upon the due process clause in the Fourteenth Amendment.

Under this branch of the argument no aid can be furnished to the court by a long list of excerpts composed of generalities. The facts in this case require treatment at close range.

It is well known that a reasonable regulation of public service corporations or persons and a reasonable limitation of the right to contract, if made under the police power in the interests of the public health, the public safety, the public morals, or the public welfare, convenience, necessity or prosperity, is valid.

Grand Trunk Ry. Co. vs. Mich. Ry. Com., 231 U. S., 457;
Wisconsin, Minnesota & Pacific R. R. Co. vs. Jacobson, 179 U. S., 287;
Atlantic Coast Line vs. N. C. Com., 206 U. S., 1;
Holden vs. Hardy, 169 U. S., 366;
Slaughter House Cases, 83 U. S., 36;
C., M. & St. P. Ry. Co. vs. Solan, 169 U. S., 133;
Carroll vs. Greenwich, 199 U. S., 401;
C., B. & Q. Ry. Co. vs. McGuire, 219 U. S., 549;
Engel vs. O'Malley, 219 U. S., 128;
Western Union Telegraph Co. vs. Commercial Milling Company, 218 U. S., 406,

wherein it is held that it was rather late in the day to make the objection.

Noble State Bank vs. Haskell, 219 U. S., 104;
Assaria State Bank vs. Dolley, 219 U. S., 121;
Mobile, Jackson R. R. Co. vs. Mississippi, 210 U. S., 187;
C., R. I. & P. Ry. Co. vs. Zernecke, 183 U. S., 582.

And that on the other hand an arbitrary, unreasonable taking of property or limiting of the right to contract is invalid especially where the statute bears no relation to

correcting some public evil or promoting the health, safety, morals, welfare or prosperity of a state or community.

Lake Shore & Mich. Southern vs. Smith, 173 U. S., 687;
Central Stock Yards vs. L. & M., 192 U. S., 568;
Missouri Pacific Ry. vs. Nebraska, 164 U. S., 403;
McNeil vs. Southern Railway Co., 202 U. S., 543, 561;
Allgeyer vs. Louisiana 165 U. S., 579;
Louisville & R. R. Co. vs. Stock Yards Co., 212 U. S., 132.

The appellee contends that this case comes squarely under the doctrine of *Wisconsin vs. Jacobson*, 179 U. S., 287, and kindred cases and is not controlled by the pronouncement in *Central Stock Yards vs. Louisville*, 192 U. S., 568.

In the former case it appears by the statutes of Wisconsin, as set out in the marginal notes on page 288, that all common carriers at points of connection and intersection, where it was practicable in view of the grade, should be required to construct and maintain track connections for the purpose of the interchange of cars between their respective lines. It was clearly shown that if this could be required one of the transportation companies in question would receive a much shorter haul on certain kinds of freight. It was recognized in the opinion that at common law courts would be without power to order such connections as was made in the court below; that legislative authority was necessary, but that "if power were granted by the legislature and it amounted in the particular case to a fair, reasonable and appropriate regulation of the business of the corporation, when considered with regard to the interests both of the company and the public the legislation would be valid and would furnish

therefore ample authority for the courts to enforce it," and the public benefit in that case was held sufficient to justify the power and the authority granted under the statutes of the state of Wisconsin, and this, notwithstanding that it would be necessary for the railway companies in question to exercise the right of eminent domain and condemn additional land and to jointly pay the cost of the construction and maintenance of the interchange track in question, and notwithstanding that one of the lines in question would not only be required to receive freight in carload lots in foreign equipment, but in addition thereto, receive a much shorter haul than it would else receive.

The right of governmental supervision of railway companies for the purpose of serving the public good and convenience was also clearly set forth. It is admitted by plaintiff in error that the refusal on the part of the Milwaukee Railway Company to accept the cars is due to a belief that it will be of a private advantage to the railway company. The appellant states: "It is doubtless fair and reasonably accurate to say that both the shippers and the carrier were actuated by self-interest." (Appellant's argument, page 17.)

The admission of appellant and the objections to obeying the order of the railway commission is clearly answered by this court in the case of *Wisconsin vs. Jacobson*, 179 U. S., 287. On page 300, Mr. Justice Peckham, speaking for the court, said:

> Can it refuse to obey the commands of the legislature in such case upon the sole ground that it may thereby somewhat lessen the earnings of its road? Or can it refuse to make such connections because, if they were made, wood could be brought from the forests of northern Minnesota to all towns along its line west of Hanley Falls, and there sold for a less price than can now be done, when without such connection being made the demand for the wood along the line of the road of the plaintiff in error is nev-

> ertheless constantly decreasing owing to its quality and price? We think these questions should receive a negative answer. The interests of the public should not be thus wholly, and it seems to us, unjustifiably ignored.

And the court added:

> "Taking the facts which we have already enumerated into consideration, we think there is no justification furnished for the argument that the judgment, if enforced, would violate any of the constitutional rights of the plaintiff in error * * * In this case the provision is a manifestly reasonable one, tending directly to the accommodation of the public, and in a manner not substantially or unreasonably detrimental to the ultimate interests of the corporation itself."

Let it be remembered that in the case at bar while the several shipments of coal in carload lots start on the new intrastate journey from Davenport, Iowa, a previous interstate shipment has just been concluded; that the coal in question is bituminous or soft coal; that it has been transported in the identical car in which it is offered to the Milwaukee Railway Company from some point in Illinois over the C., B. & Q. or C., R. I. & P. Ry.

Let it be remembered that this coal could not be unloaded at Davenport and reloaded without greatly depreciating the value and quality of the coal. A considerable part of the coal would have to be screened in order to again put it in the No. 1 grade; that a reasonable charge for unloading and reloading a car of coal would be from fifteen to thirty-five cents per ton, depending upon the facilities for unloading and reloading.

Let it be remembered that there is no machinery by which coal could be unloaded from the regular coal car in general use and reloaded into another car.

Let it be further remembered that about twenty-five per cent of lump coal is hauled in box or grain cars and not regular coal cars.

Let it be further remembered that the length of time consumed in the unloading and reloading of this coal would be sufficient for the car to be transported locally between two points in the state of Iowa.

In view of these facts can it be said that this case is not controlled by the pronouncement made in the case of *Wisconsin vs. Jacobson*, 179 U. S., page 300?

Counsel say, page 21 of the brief: "Of course, it would not have damaged a commodity like coal to transfer it from one car into another."

Evidently counsel is not familiar with the characteristics of bituminous or soft coal, else he would make no such statement. Possibly he has lived most of his time in an anthracite region. The Board of Railway Commissioners of Iowa found that it would injure the coal to be transferred. On page 16 of the Record, the commission say that it is within common knowledge that to unload and reload coal causes great injury to the coal itself as well as the burden of the expense in the transfer, and our supreme court said: "It certainly would be a great inconvenience to the public to be compelled to unload and reload in the defendant's equipment every car of coal that the dealer might wish to send out over the defendant's road."

Counsel for appellant says that "the fact that the shipper did not bill the coal from the Illinois mines to its ultimate destination must be accounted for by some objection or objections in the minds of the shippers" and that "whether this was due wholly to a desire to get a lower rate than the interstate rate, *or wholly to the desire to have the carload shipment free to re-consign at Davenport to whichever point of final destination a purchaser*

might be found at, or whether it was due in part to each of these reasons, is not a matter of vital importance."

Counsel again fall in error because of a lack of knowledge of the actual conditions. The record shows that there are a number of jobbers and wholesalers dealing in coal at Davenport, Iowa, who receive coal from points in Illinois and re-consign the same at Davenport.

To a jobber who purchases his coal from Illinois mines and re-ships it from Davenport, Iowa, to points in Iowa in competition with the Iowa coal mines, some of which are located on the lines of the Milwaukee Railway Company, it is a matter of tremendous importance whether he shall be required to pay more per ton for having his coal unloaded and reloaded than the actual profit per ton he makes in the jobbing business, and in addition thereto have the coal depreciate by reason of its being unloaded by hand from the car either into a vehicle, a platform or even thrown at considerable distance from one car to another, depending upon the circumstances in the case; and it is of tremendous importance to him whether he shall be able to have coal coming into Davenport in carload lots from day to day that he can immediately re-consign to any point in Iowa on the line of the Milwaukee railway in response to a telegraphic or telephone order for coal where there is a desire for prompt delivery. The retail dealer in the small town does not carry great quantities of coal on hand but depends upon the jobber, wholesaler or operator filling his orders promptly.

I use the words "tremendous importance" advisedly and conservatively for the reason that the difference of unloading and reloading coal, at times waiting for cars during car shortages, with the depreciation of the coal, is sufficient to determine whether the jobber may do business or whether he may not do business. Unless the business will afford a jobber at least a small profit, he must discontinue the same, and the order of the Milwaukee

Railway Company will necessarily greatly limit the business transacted at Davenport, and make it impossible for a number of the firms now engaged in the jobbing coal business to continue therein.

The record may not be complete as to some of these facts, but they are offered in reply to the gratuitous information offered by counsel for appellant, and we trust that it is not improper in replying to counsel's statement as to why coal is not transported directly from the initial points in Illinois to the point of destination in Iowa, to suggest that there is now no joint tariff over the lines of the C., B. & Q. and the C., R. I. & P. Ry. Companies, from mining stations in Illinois to local stations in Iowa over the Milwaukee Railway Company*

If the state is misinformed as to this point, we will be glad to have counsel give the court a list of the joint tariffs, but even if the railway companies should hereafter promulgate joint tariffs from mining stations in Illinois to points in Iowa over the line of the Milwaukee Railway Company, it would still only be a partial relief because only a part of the coal is sold at the time the car starts on its initial shipment in Illinois. Orders are filled from day to day by these jobbers and wholesalers at Davenport from coal either on track at Davenport or enroute between the mines in Illinois and Davenport, Iowa.

We respectfully urge that the case at bar is not only governed by the doctrine announced in the case of *Wisconsin vs. Jacobson*, but that in the late case of *Grand Trunk Ry. Co. vs. Mich. Ry. Com.*, 231 U. S., 457, and also the case of *Atlantic Coast Line Ry. Company vs. North Carolina Commission*, 206 U. S., 1, wherein the case of *Wisconsin vs. Jacobson* is cited and followed, a complete answer is made to every objection urged by plaintiff in error, and see *Missouri Railway Company vs. Mackey*, 127 U. S., 205.

These cases, in addition to those previously cited, make it clear that the order of the railroad commissioners of

*except a joint tariff effective October 9, 1913, from Peoria, Ill., via C., R. I. & P. Ry. to DePue, Ill.

Supplement Nos. 17 & 18 to C. M. & St. P. Ry. Tariff, No. 10800-A, I. C. C., No. B-2506.

Iowa does not deprive plaintiff in error of property without due process, and these cases also make it clear that plaintiff is not denied due process by reason of limiting its right to contract.

In the case of *Western Union Telegraph Company vs. Commercial Milling Company,* 218 U. S., 406, this court, on page 421, said:

> The basis of this contention (plaintiffs in error) is the liberty of the telegraph company to make contracts. It is rather late in the day to make that contention. The regulation of public service corporations is too well established both as to power and the extent of the power, to call for any discussion.

Almost the precise question was passed upon by the Supreme Court of Iowa in the case of *B., C. R. & N. Ry. Co. vs. Dey,* 82 Iowa, 312, decided in January, 1891. The court, at page 335, said:

> The course of business of railroad companies, originating in the wants and demands of commerce, requires the cars of one company to be delivered to another for transportation. It is presumed that rules relating to compensation for the cars transported are settled by agreement, or under rules recognized and prevailing in the business of transportation by railroads. At all events, the law provides rules under which this matter of compensation may be settled. It is competent for the railroad commissioners, if it be necessary, to impose rules touching this matter, in order to aid the railroad companies to perform the duty imposed by the statute to provide for joint rates, or to require or enforce the performance of that duty. The fact that the transfer of cars from one company to another, for the transportation of property over more than one railroad, without breaking bulk, has been practiced so long as to be recognized as of the course of business, of which we will take judicial notice (*Peoria & P. U. Ry. Co. vs. Railroad,* 109 Ill., 135), is a complete answer to the complaints made in the objections under consideration. Surely a course of business so long

> pursued, and so extensively prevailing, and demanded by the commerce of this country, cannot, when recognized and required by statute, become so objectionable in principle, so oppressive in operation, as to require the statute to be declared unconstitutional.

And expressly found that it did not offend against the due process clause of the Fourteenth Amendment, and this case has been frequently cited by the courts of the country, including this court. It was cited with approval in the case of *Minneapolis & St. Louis Ry. Co. vs. Minnesota*, 186 U. S., 257. In this case the court said: "We are bound to recognize the fact that modern commerce is largely carried on over railways owned and operated by different companies," and the court also cited the case of *Wisconsin vs. Jacobson*.

The case at bar does not present facts similar to those in the case of *Central Stock Yards vs. Louisville Ry. Co.*, 192 U. S., 568. This is not a case where one railway company hauls the cars from the point of origin to the station of destination and then is asked to turn over loaded cars to some other transportation company at the point of destination at some connecting track in close proximity to the point of delivery.

Undoubtedly this court was correct in saying that the statutes of Kentucky "cannot be intended to sanction the snatching of the freight from the transportation company at the moment and for the purpose of delivery." Surely that is different than requiring a railway company to unload and reload soft coal and refuse to receive the same in the equipment in which the coal was loaded at the mines in Illinois and transported to Davenport, Iowa, and placed on an interchange track for a future, local shipment.

We have amplified on this point beyond the necessities of the case. We feel that after a statement of the facts

nothing more would have been required except to direct attention to the case of *Wisconsin vs. Jacobson* and *Atlantic Coast Line vs. N. C. Commission, supra,* as more than ample authority for the order of the Board of Railroad Commissioners of Iowa, especially in view of the holding of this court in the late case of *Grand Trunk Ry. vs. Mich. Ry. Com.*, 231 U. S., 457.

It is urged by plaintiff in error that the order of the Board of Railway Commissioners of Iowa will also injure the C., B. & Q. and the C., R. I. & P. railway companies.

It has become elementary that plaintiff in error can complain only of the injury which he himself may sustain and may not strike down a statute as violative of the Federal Constitution because of its possible injury to someone else.

> *Standard Stock Food Company vs. Wright*, 225 U. S., 540, at 550.

As a matter of fact, however, the C., R. I. & P. and the C., B. & Q. railway companies are not complaining of this order, and the solicitude of plaintiff in error in behalf of these companies is wholly unwarranted.

VI.

Under Division VII appellant claims that the order of the commission in question offends against the Fourteenth Amendment in that the railway company is denied the equal protection of the laws.

We do not feel justified in discussing this proposition in view of the holding of this court in the cases of *Wisconsin vs. Jacobson*, 179 U. S., 287, and *Atlantic Coast Line vs. N. C. Corporation Commission*, 206 U. S., 1, with cases cited in a marginal note on page 19.

For more recent decisions on this point see the cases of

> *Grand Trunk Ry. Co. vs. Mich. R. R. Com.* 231 U. S., 457;

Western Union Telegraph Co. vs. Commercial Milling Company, 218 U. S., 406;
Griffith vs. State of Kentucky, 218 U. S., 563;
Kentucky Union Company vs. Kentucky, 219 U. S., 140;
German Alliance Insurance Co. vs. Hale, 219 U. S., 307;
District of Columbia vs. Brooke, 214 U. S., 138;
Brown-Forman Co. vs. Kentucky, 217 U. S., 563;
Field vs. Barber Asphalt Co., 194 U. S., 618;
McLean vs. Arkansas, 211 U. S., 546;
Williams vs. State of Arkansas, 217 U. S., 79;
Carroll vs. Greenwich Insurance Co., 199 U. S., 401;
S. W. Oil Company vs. Texas, 217 U. S., 114;
Mo., K. & T. Ry. Co. vs. May, 194 U. S., 267.

VII.

The order of the Board of Railway Commissioners of Iowa does not offend against the commerce clause of the Federal Constitution because it is not a burden on interstate commerce, but rather an aid to interstate commerce.

In view of the decisions previously cited and the numerous decisions of the court sustaining state statutes which affect interstate commerce but do not place any burden thereon little need be said. The order of the railway commission of Iowa is in aid of interstate commerce because it tends to a more prompt releasing of cars. Time is lost in the unnecessary unloading and reloading of cars at Davenport, Iowa. The time consumed in the unloading and reloading of the cars in question would often be equal to that required in transporting the car over the entire local shipment. In any event the regulation being reasonable, it is clearly within the police power of the state.

If the regulation is reasonable and congress has remained silent upon the specific matter, it is neither a bur-

den to interstate commerce nor a conflict with the acts of congress to regulate interstate commerce.

Grand Trunk Ry. vs. Mich. Ry. Commission, 231 U. S., 457;
Savage vs. Jones, 225 U. S., 501;
Standard Stock Food Company vs. Wright, 225 U. S., 540;
Reid vs. Colorado, 187 U. S., 137, 147;
Northern Pacific Ry. Co. vs. Washington, 222 U. S., 370;
C. C., etc. vs. Ill., 177 U. S., 514;
Minnesota Rate Cases, 230 U. S., 352; and see
McLean vs. Denver & Rio Grande Railway Co., 203 U. S., 38, 55;
Smith vs. Alabama, 124 U. S., 465;
Nashville Ry. Co. vs. Alabama, 128 U. S., 96;
N. Y. R. R. Co. vs. New York, 155 U. S., 628;
Hennington vs. Georgia, 163 U. S., 299.

The decision of the Supreme Court of Iowa should be affirmed.

Respectfully submitted,

GEORGE COSSON, *Attorney General*,
For Appellee.

HENRY E. SAMPSON,
Of Counsel.

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY *v.* STATE OF IOWA.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 176. Argued March 3, 1914.—Decided April 13, 1914.

Whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract.

The reshipment of an interstate shipment by the consignees in the cars in which received to other points of destination does not necessarily establish a continuity of movement or prevent the shipment to a point within the same State from having an independent and intrastate character.

In this case, *held*, that shipments of coal when reshipped, after arrival from points without the State and acceptance by the consignees, to points within the State on new and regular billing forms constituted intrastate shipments and were subject to the jurisdiction of the State Railroad Commission.

Whether the common law or statutory provisions apply to a case is for the state court to determine, and so *held*, that in Iowa the State Railroad Commission has power under the state law to require common carriers to use the equipment of connecting carriers to transport shipments from the points of original destination to other points within the State.

A State may, so long as it acts within its own jurisdiction and not in hostility to any Federal regulation of interstate commerce, compel a carrier to accept, for further reshipment over its lines to points within the State, cars already loaded and in suitable condition; and an order to that effect by the State Railroad Commission is not

unconstitutional as depriving the carrier of its property without due process of law.

Where it appears that an order of the State Railroad Commission simply required the carrier to continue a former practice, and the record does not disclose that it involves additional expense over the new practice proposed, this court is not justified in holding that the order is unconstitutional as depriving the carrier of its property without due process of law because it subjects it to an unreasonable expense.

This court cannot, at the instance of the carrier, hold an order of the State Railroad Commission, otherwise valid, requiring the carrier to forward interstate shipments after receipt to intrastate points in the same equipment, void as interfering with interstate commerce because the cars are vehicles of interstate commerce, when no actual interference with such commerce is shown nor is any such question raised between the shippers and the owners of the cars.

152 Iowa, 317, affirmed.

THE facts, which involve the validity and also the constitutionality under the commerce clause of, and the Fourteenth Amendment to, the Federal Constitution, of an order of the State Railroad Commission of Iowa in regard to carload shipments of coal, are stated in the opinion.

Mr. O. W. Dynes, with whom *Mr. C. S. Jefferson* and *Mr. Burton Hanson* were on the brief, for plaintiff in error:

The proposed shipment from Davenport to destination in Polk County, Iowa, was an intrastate shipment.

At common law a carrier is not compelled to use foreign equipment designated by the shipper, but has the right to use its own equipment to transport property over its own rails.

There is no statute in Iowa that compels the initial carrier to receive a shipment in a foreign car and the statute of that State requiring a connecting carrier, acting as such, to receive shipments coming to it over other lines in foreign cars, does not apply to the case at bar for the reason that plaintiff in error was the initial carrier and not a connecting carrier.

The order of the Board of Railroad Commissioners was void *ab initio* because its enforcement would deprive plaintiff in error of its constitutional right to contract, secured by the Fourteenth Amendment; also because its enforcement would entail the taking of property without due process of law, in contravention of the Fourteenth Amendment.

The order, if enforced, would deny to the plaintiff in error the equal protection of the laws, contrary to the Fourteenth Amendment.

The order is also void because its enforcement would interfere with and burden interstate commerce through interfering with and burdening the instruments of interstate commerce.

In support of these contentions, see Act to Regulate Commerce, 24 Stat. 379; *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589; *Atchison &c. R. R.* v. *Denver & N. O. R. R.*, 110 U. S. 667, 680; *Atchison &c. Ry. Co.* v. *United States*, 232 U. S. 199; *Baltimore & Ohio R. R. Co.* v. *United States et al.*, 215 U. S. 481; *Central Stockyards* v. *L. & N. Ry. Co.*, 192 U. S. 568, 571; Iowa Code, § 2116; *Id.*, Supp., 1907, § 2153; *Coe* v. *Errol*, 116 U. S. 517; *Gulf, Col. &c. Ry. Co.* v. *Texas*, 204 U. S. 403; *Int. Com. Comm.* v. *I. C. R. R. Co.*, 215 U. S. 452, 474; *Lake Shore & M. S. Ry. Co.* v. *Smith*, 173 U. S. 684, 698; *Little Rock &c. Ry. Co.* v. *St. Louis &c. Ry. Co.*, 63 Fed. Rep. 775; *Louis. & Nash. Ry. Co.* v. *Central Stockyards*, 212 U. S. 132, 144; *Louis. & Nash. R. R. Co.* v. *Garrett*, 231 U. S. 298; *Louis. & Nash. R. R. Co.* v. *Siler*, 186 Fed. Rep. 176; *McCulloch* v. *Maryland*, 4 Wheat. 415, 426; *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543; *Minnesota Rate Cases*, 230 U. S. 352, 400; *Mo. & Ill. Coal Co.* v. *I. C. R. R. Co.*, 22 I. C. C. 39; *Mo. Pac. Co.* v. *Nebraska*, 164 U. S. 403, 417; *Nor. Pac. Ry. Co.* v. *Washington*, 222 U. S. 370, 377; *O'Ferrall* v. *Simplot*, 4 Clarke (Iowa), 381, 399; *Ohio R. R. Comm.* v. *Worthington*, 225 U. S. 101; *Oregon Short Line* v. *Nor. Pac.*

R. R. Co., 51 Fed. Rep. 465, 472; *Smith* v. *Alabama*, 124 U. S. 465, 473; *So. Pac. Terminal Co.* v. *I. C. C.*, 219 U. S. 498; *Southern R. Co.* v. *United States*, 222 U. S. 20, 26; *Texas & N. O. R. R. Co.* v. *Sabine*, 227 U. S. 111.

Mr. George Cosson, Attorney General of the State of Iowa, with whom *Mr. Henry E. Sampson* was on the brief, for defendant in error:

The Board of Railroad Commissioners have authority under the statutes of Iowa to make the order requiring the Milwaukee Railway Company to receive coal on the interchange track at Davenport, Iowa, in the equipment in which the coal was then loaded, and to prohibit the Milwaukee Railway Company from requiring the coal companies at Davenport to unload the coal and reload the same in Milwaukee equipment as a condition precedent to its moving in intrastate commerce over the lines of the Milwaukee Railroad Company in Iowa. *State* v. *Chicago, Milwaukee Ry. Co.*, 152 Iowa, 317; *Louis. & Nash. R. R. Co.* v. *Kentucky*, 183 U. S. 503.

The order of the Board does not deny plaintiff due process either by taking its property or by denying it the right of the liberty of contract.

A reasonable regulation of public service corporations or persons and a reasonable limitation of the right to contract, if made under the police power in the interests of the public health, the public safety, the public morals, or the public welfare, convenience, necessity or prosperity, is valid. *Grand Trunk Ry. Co.* v. *Mich. Ry. Com.*, 231 U. S. 457; *Wis. &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287; *Atlantic Coast Line* v. *Nor. Car. Com.*, 206 U. S. 1; *Holden* v. *Hardy*, 169 U. S. 366; *Slaughter House Cases*, 16 Wall. 36; *C., M. & St. P. Ry. Co.* v. *Solan*, 169 U. S. 133; *Carroll* v. *Greenwich*, 199 U. S. 401; *C., B. & Q. Ry. Co.* v. *McGuire*, 219 U. S. 549; *Engel* v. *O'Malley*, 219 U. S. 128; *West. Un. Tel. Co.* v. *Commercial Mill. Co.*, 218 U. S. 406;

Noble State Bank v. *Haskell*, 219 U. S. 104; *Assaria State Bank* v. *Dolley*, 219 U. S. 121; *Mobile, Jackson R. R. Co.* v. *Mississippi*, 210 U. S. 187; *C., R. I. & P. Ry. Co.* v. *Zernecke*, 183 U. S. 582.

On the other hand, an arbitrary, unreasonable taking of property or limiting of the right to contract is invalid, especially where the statute bears no relation to correcting some public evil or promoting the health, safety, morals, welfare or prosperity of a State or community. *Lake Shore Ry.* v. *Smith*, 173 U. S. 687; *Central Stock Yards* v. *Louis. & Nash. R. R.*, 192 U. S. 568; *Mo. Pac. Ry.* v. *Nebraska*, 164 U. S. 403; *McNeil* v. *Southern Ry. Co.*, 202 U. S. 543, 561; *Allgeyer* v. *Louisiana*, 165 U. S. 579; *Louis. & Nash. R. R. Co.* v. *Stock Yards Co.*, 212 U. S. 132.

Almost the precise question was passed upon by the Supreme Court of Iowa in the case of *B., C. R. & N. Ry. Co.* v. *Dey*, 82 Iowa, 312, 335.

This case does not present facts similar to those in the case of *Central Stock Yards* v. *Louisville Ry. Co.*, 192 U. S. 568.

A plaintiff in error can complain only of the injury which he himself may sustain and may not strike down a statute as violative of the Federal Constitution because of its possible injury to some one else. *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, p. 550.

The order of the Commission in question does not deny the railroad company the equal protection of the laws. *Wisconsin* v. *Jacobson*, 179 U. S. 287; *Atlantic Coast Line* v. *Nor. Car. Corp. Comm.*, 206 U. S. 1, 19; *Grand Trunk Ry. Co.* v. *Mich. R. R. Comm.*, 231 U. S. 457; *West. Un. Tel. Co.* v. *Commercial Milling Co.*, 218 U. S. 406; *Griffith* v. *Kentucky*, 218 U. S. 563; *Kentucky Union Co.* v. *Kentucky*, 219 U. S. 140; *German Alliance Ins. Co.* v. *Hale*, 219 U. S. 307; *District of Columbia* v. *Brooke*, 214 U. S. 138; *Brown-Forman Co.* v. *Kentucky*, 217 U. S. 563; *Field* v. *Barber Asphalt Co.*, 194 U. S. 618; *McLean* v. *Arkansas*, 211 U. S.

546; *Williams* v. *Arkansas*, 217 U. S. 79; *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401; *S. W. Oil Company* v. *Texas*, 217 U. S. 114; *Mo., K. & T. Ry. Co.* v. *May*, 194 U. S. 267.

The order does not offend against the commerce clause of the Federal Constitution; it is not a burden on interstate commerce, but rather an aid to interstate commerce.

The order is in aid of interstate commerce because it tends to a more prompt releasing of cars. Time is lost in the unnecessary unloading and reloading of cars at Davenport, Iowa. The time consumed in the unloading and reloading of the cars in question would often be equal to that required in transporting the car over the entire local shipment. In any event the regulation being reasonable, it is clearly within the police power of the State.

If the regulation is reasonable and Congress has remained silent upon the specific matter, it is neither a burden on interstate commerce nor in conflict with the acts of Congress to regulate interstate commerce. *Grand Trunk Ry.* v. *Mich. Ry. Comm.*, 231 U. S. 457; *Savage* v. *Jones*, 225 U. S. 501; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540; *Reid* v. *Colorado*, 187 U. S. 137, 147; *Nor. Pac. Ry. Co.* v. *Washington*, 222 U. S. 370; *Cleveland &c. Ry. Co.* v. *Illinois*, 177 U. S. 514; *Minnesota Rate Cases*, 230 U. S. 352; and see *McLean* v. *Denver &c. Ry. Co.*, 203 U. S. 38, 55; *Smith* v. *Alabama*, 124 U. S. 465; *Nashville Ry. Co.* v. *Alabama*, 128 U. S. 96; *N. Y. R. R. Co.* v. *New York*, 155 U. S. 628; *Hennington* v. *Georgia*, 163 U. S. 299.

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought by the State of Iowa to obtain a mandatory injunction requiring the Chicago, Milwaukee & St. Paul Railway Company to comply with an order of the State Railroad Commission promulgated December 22, 1909. The defendant answered, denying the validity of

the order, and also filed a cross petition to set it aside alleging that it was repugnant to the Constitution of the United States as an attempt to regulate interstate commerce and to deprive the Company of its property without due process of law and, further, that the Commission was without authority under the laws of the State to make the order. Judgment, sustaining the action of the Commission and directing compliance, was affirmed by the Supreme Court of the State. 152 Iowa, 317.

It appeared that the Railway Company, in 1909, had refused to accept shipments of coal in carload lots at Davenport, Iowa, for points in that State when tendered in cars of other railroad companies by which the coal had been brought to Davenport from points in Illinois. The Railway Company insisted that it was entitled to furnish its own cars. The Clark Coal and Coke Company, operating a branch at Davenport, complained of this rule to the Railroad Commission, stating that it was a departure from the practice which had obtained for several years with respect to such shipments, that the Clark Company paid all charges to Davenport and on receiving orders from its customers tendered written billing for transportation from Davenport to the designated points, and that it was unreasonable for the Railway Company to require in such cases that the coal should be unloaded and reloaded in its own cars. A hearing was had before the Commission at which other shippers intervened, adopting the coal company's complaint. The facts were presented in an agreed statement, as follows:

"The Clark Coal & Coke Company of Davenport, Iowa, have been making shipments of coal from points in Illinois to Davenport by the Chicago, Rock Island & Pacific Railway Company and the Chicago, Burlington & Quincy Railroad Company; that said coal is then placed by the railroad bringing it into Iowa on an interchange track at Davenport; that all charges from point of origin

in Illinois to Davenport, Iowa, are paid by the Clark Coal & Coke Company to the railroad company bringing said coal; that thereupon complainant had notified the respondent railway company of the placement of said coal and that it desired to ship said coal by the respondent railway company to different points on its own line, and tendered a written billing from Davenport to the point so designated; that thereupon respondent railway company has accepted said written billing from Davenport to said point and taken said cars from said interchange track to its own line and transported the same in accordance with said written billing; that the respondent railway company has changed its method of doing business in the above respects by its printed order and now refuses to accept said written billing and take said cars from said interchange track and transport them over its own line to the point designated by said billing, unless said coal is loaded in equipment belonging to respondent railway company. Respondent railway company, by its answer to the complaint, alleges that it 'will furnish cars for shipment of coal from Davenport to any point in Iowa, as provided by Iowa Distance Tariff, but will not accept shipments originating at Davenport, billed from Davenport in the equipment of other carriers,' and its readiness and ability to furnish cars of its own for shipment is not controverted and will therefore be taken to be true. It will thus be observed that before the respondent railway company will take coal for transportation on its own line, in equipment other than its own, it requires that the same shall be unloaded and reloaded into its own cars."

Thereupon, the Commission rendered a decision in favor of the shipper and entered the following order to which this controversy relates:

"In accordance with the conclusions heretofore expressed, it is therefore ordered by the Board of Railroad Commissioners of Iowa that upon arrival of loaded cars of

coal at the city of Davenport, upon any line of railroad, when said cars are placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight paid thereon, and the ordinary billing in use by the respondent railway is tendered to it for a billing of said cars so placed to a point on its own line within the State of Iowa, that the respondent railway company be and it is hereby ordered and required to accept said billing, receive said car or cars so billed and transport them on its own line to the point designated by the owner or consignee in said billing; and that it receive said car or cars in whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment, and transport said car or cars over its own line to points within this State, so loaded, without unloading or reloading as above set forth, in the same manner that it receives cars from connecting lines loaded in its own equipment. It is expressly understood, however, in this order, that no questions in relation to switching charges are determined."

The Railway Company contended, both before the Commission and in the state court, that the shipments in question were interstate; and it was alleged in its answer that the method of transportation resorted to was a device of shippers to secure, by adding the rate from the initial point in Illinois to Davenport to the rate established by the Iowa distance tariff from Davenport to other points in the State, a lower rate than that applicable to an interstate shipment from the point in Illinois to the point of final destination.

The Railroad Commission held that the transportation desired from Davenport was a purely intrastate service, saying: "Under the admitted facts, the city of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be

shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee and he could sell it in transit or at Davenport or reconsign it to a point on respondent's railway, or any other railway, at his own discretion." Upon the trial of the present suit in the state court, the State introduced in evidence the proceedings, decision and order of the Commission, and without further evidence both parties rested. The Supreme Court of the State took the same view of the facts that the Commission had taken and accordingly held that the shipments were intrastate. The court said that the facts showed that the coal was originally consigned to the coal company in Davenport, that it was there held until sales were made, that the consignee had taken delivery, paying the freight to the initial carrier and assuming full control. 152 Iowa, 317, 319.

The record discloses no ground for assailing this finding. It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract. *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *Railroad Commission of Louisiana* v. *Texas & Pacific Rwy. Co.*, 229 U. S. 336. But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character. *Gulf, Colorado & Santa Fe Rwy. Co.* v. *Texas*, 204 U. S. 403; *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101, 109; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 129, 130. The question is with respect to the nature of the actual movement in the particular

case; and we are unable to say upon this record that the state court has improperly characterized the traffic in question here. In the light of its decision, the order of the Commission must be taken as referring solely to intrastate transportation originating at Davenport.

In this view, the validity of the Commission's order is challenged upon the ground that at common law the carrier was entitled to use its own equipment, and that the statute of the State of Iowa as to the receiving of cars from connecting carriers (Code, § 2116) is inapplicable for the reason that with respect to the transportation in question the plaintiff in error was the initial carrier. But the obvious answer is that what is required by the law of Iowa has been determined by the Supreme Court of that State. That court, examining the various provisions of the Iowa Code which have relation to the matter, has held that the order was within the authority of the Railroad Commission. 152 Iowa, 317, 320, 321.

Further, the plaintiff in error insists that the enforcement of the order would deprive it of its liberty to contract, and of its property, without due process of law, and would deny to it the equal protection of the laws in violation of the Fourteenth Amendment. We find these objections to be without merit. It was competent for the State, acting within its jurisdiction and not in hostility to any Federal regulation of interstate commerce, to compel the carrier to accept cars which were already loaded and in suitable condition for transportation over its line. The requirement was a reasonable one. It cannot be said that the plaintiff in error had a constitutional right to burden trade by insisting that the commodities should be unloaded and reloaded in its own equipment. Upon this point the case of *Wisconsin &c. R. R. Co.* v. *Jacobson*, 179 U. S. 287, is decisive. There is no essential difference, so far as the power of the State is concerned, between such an order as we have here and one compelling the

carrier to make track connections, and to receive cars from connecting roads, in order that reasonably adequate facilities for traffic may be provided. See also *Minneapolis & St. Louis* v. *Minnesota*, 186 U. S. 257, 263; *Atlantic Coast Line* v. *North Carolina Corp. Com'n*, 206 U. S. 1, 19, 27; *Missouri Pacific Rwy. Co.* v. *Kansas*, 216 U. S. 262; *Grand Trunk Rwy. Co.* v. *Michigan Railroad Commission*, 231 U. S. 457, 468.

It is argued that it was unreasonable to subject the Railway Company to the expense incident to the use of the cars of another carrier when it was ready to furnish its own. The record affords no sufficient basis for this contention. What the expense referred to would be was not proved, and, in the absence of a suitable disclosure of the pertinent facts, no case was made which would justify the conclusion that in its practical operation the regulation would impose any unreasonable burden. On the other hand, the agreed statement makes it evident that prior to the change which gave rise to this controversy it was the practice of the Company to accept such shipments.

Finally, it is said that the order of the Commission interferes with interstate commerce because the cars in question were the vehicles of that commerce and were brought into the State as such. No question, however, is presented here as between the shippers and the owners of the cars, and no actual interference with interstate commerce is shown. Nor does it appear that any regulation under Federal authority has been violated.

The plaintiff in error has failed to establish any ground for invalidating the order of the Commission and the judgment must be affirmed.

Affirmed.